

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN THE MATTER OF, Case No. 13-53846
Detroit, Michigan
CITY OF DETROIT, MICHIGAN November 16, 2016
_____/ 1:35 p.m.

IN RE: [#11624] MOTION TO DETERMINE RIGHTS TO CLAIM NUMBER
201, [#11623] OBJECTION TO CLAIM OF GENERAL SHALE BRICK, CO.,
[#11620] OBJECTION TO CLAIM OF CLAIMANT STEVEN WOLAK, [#11357]
MOTION TO ENFORCE ORDER, PURSUANT TO SECTIONS 105, 501, AND
503 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002 AND
3003(c), ESTABLISHING BAR DATES FOR FILING OF PROOFS OF CLAIM
AND APPROVING FORM AND MANNER OF NOTICE THEREOF AGAINST DANNY
CROWELL, LEOTA MURPHY AND JASMINE CROWELL, [#11583] MOTION TO
ENFORCE ORDER, PURSUANT TO SECTIONS 105, 501, AND 503 OF THE
BANKRUPTCY CODE AND BANKRUPTCY RULES 2002 AND 3003(c),
ESTABLISHING BAR DATES FOR FILING OF PROOFS OF CLAIM AND
APPROVING FORM AND MANNER OF NOTICE THEREOF AGAINST NAJIB
HODGE, AND [#11399] FORTY-SEVENTH OMNIBUS OBJECTION TO CERTAIN
NO BASIS CLAIMS, REGARDING CLAIM #785 OF BEATRICE MCQUEEN
BEFORE THE HONORABLE THOMAS J. TUCKER
TRANSCRIPT ORDERED BY: ROBIN WYSOCKI

APPEARANCES:

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21 PRESENT: Beatrice McQueen

22 Court Recorder: Jamie Laskaska

23 Transcriber: Deborah L. Kremlick

24 Proceedings recorded by electronic sound recording, transcript
25 produced by transcription service.

1 (Court in Session)

2 THE CLERK: Please rise. This Court is back in
3 session. You may be seated. The Court will call the matter
4 of the City of Detroit, Michigan, 13-53846.

5 THE COURT: All right. Good afternoon, everyone.
6 Let's have entries of appearance for the record, please,
7 starting with the City of Detroit attorneys.

8 MR. SWANSON: Good afternoon, Your Honor. Marc
9 Swanson on behalf of the city.

10 MR. WILLEMS: Good afternoon, Your Honor. John
11 Willems also on behalf of the city.

12 MR. SPINNER: Good afternoon. Ron Spinner on behalf
13 of the city.

14 THE COURT: All right. Any other attorneys present
15 who want to enter appearances.

16 MR. GUZALL: Good afternoon, Your Honor. Raymond
17 Guzall on behalf of Michael Beydoun.

18 MR. KILPATRICK: Good afternoon, Your Honor.
19 Richardo Kilpatrick on behalf of the trustee for the Steven
20 Wolak estate, Karen Evangelista.

21 MR. BAPACKER: Good afternoon, Your Honor. Afan
22 Bapacker on behalf of Kajy Development, LLC.

23 MR. COLUCCI: John Colucci appearing on behalf of
24 General Shale Brick Company.

25 THE COURT: I'm sorry, your last name again, sir.
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1 MR. COLUCCI: Colucci, John Colucci, C-o-l-u-c-c-i.

2 THE COURT: General -- on behalf of General Shale.

3 All right. Thank you. Others? Anyone else?

4 All right. Well, good morning to -- or good afternoon
5 rather to everyone. We have of course several matters
6 scheduled for hearing today, or further hearing in some cases
7 today.

8 Let me first address a question to counsel for the City
9 of Detroit. I have in mind an order in which I'd like to hear
10 these matters, but I'm open to suggestions from anyone on what
11 -- if something -- some order that might make more sense. But
12 I think the first thing I want to -- to find out is whether
13 any of these matters are settled or resolved, the matters
14 scheduled for today.

15 MR. WILLEMS: Your Honor, if I may. I'm here on the
16 McQueen claim.

17 THE COURT: Yes.

18 MR. WILLEMS: And that has not been settled. Ms.
19 McQueen is in the courtroom and it's probably the simplest of
20 the matters before you today, so --

21 THE COURT: I had in mind calling that first.

22 MR. WILLEMS: Okay.

23 THE COURT: For that reason, but we'll see if it's
24 so simple. But are any matters settled, that's what I'm

25 asking.

1 MR. WILLEMS: No, Your Honor. Beydoun may be
2 settled to a certain extent, but I think we're going to still
3 have to have the Court resolve certain issues.

4 THE COURT: All right.

5 MR. COLUCCI: With respect to General Shale, I
6 believe there's general agreement on the disposition of both
7 the claim objection and the motion relative to distribution.

8 THE COURT: All right. First thing we'll hear then,
9 and -- and, you know, I -- I will start with as the first
10 matter that we're going to hear, the further hearing on the
11 objection to the -- by the city to the claim of Beatrice
12 McQueen which is part of the forty-seventh omnibus objection
13 to claims. Let's hear from the parties and counsel on that.
14 Ms. McQueen, if you're here, come on up.

15 All right. So Ms. McQueen, would you enter your
16 appearance for the record, please.

17 MS. MCQUEEN: Beatrice McQueen.

18 THE COURT: All right. Good afternoon and welcome
19 back, Ms. McQueen. And Mr. Willems, you're going to speak for
20 the city on this one?

21 MR. WILLEMS: Yes, I am, Your Honor.

22 THE COURT: All right. I had thought this would be
23 settled, or had been settled based on the city's most recent
24 filing that was -- the supplemental reply filed October 12,

1 order to resolve this dispute. But if it's not resolved, Mr.
2 Willems, let me start with you. Why not?

3 MR. WILLEMS: Well, we made the proposal to Ms.
4 McQueen to allow the claim at the amount that she valued it at
5 which is \$3,968. I'm speaking here about proof of claim
6 number 785. And that it be allowed as a Class 15 convenience
7 claim.

8 And we did send her a -- a letter proposing that with an
9 attached stipulation and order. As you may recall, there was
10 another claimant wrapped up in this, Ms. Dinah Bolton.

11 THE COURT: I do recall. That one settled. This
12 one apparently is not yet.

13 MR. WILLEMS: That one settled. And I had a
14 conversation with Ms. McQueen's daughter, the -- at the time
15 of the last hearing when they asked for an adjournment for Ms.
16 McQueen to today. And went over that with her and she
17 declined to accept the offer. So that's how we ended up here
18 today.

19 THE COURT: All right. Ms. McQueen, I'd like to
20 hear from you about this. The city -- maybe I'm missing
21 something, but the city in their October 12 supplement, or
22 supplemental reply that they filed in -- in addressing your
23 objection to your claim and in the proposed stipulation and
24 order they attached, they seemed to give you what you want.

25 They -- they give you an allowed claim in the full amount of
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1 your claim. So why are we here today?

2 MS. MCQUEEN: Because to my understanding -- first I
3 apologize I wasn't here, I had a stroke. But --

4 THE COURT: I'm sorry about that. I hope you're
5 doing well, doing better.

6 MS. MCQUEEN: I'm doing better.

7 THE COURT: All right. Yeah, we adjourned the last
8 hearing because of that, so go ahead.

9 MS. MCQUEEN: Right. So I'm -- to my understanding
10 the reason that we declined it because from what he explained
11 to me, it would be issued out to me over years in bonds and
12 not in money. So that's why it was declined.

13 THE COURT: Well, what the city is proposing or has
14 proposed in their October 12 paper is not -- I think you're
15 thinking of this -- what would happen if this claim were
16 treated as a Class 14 claim, general unsecured claim rather
17 than a Class 15 under the confirmed plan of adjustment Class
18 15, so-called convince claims they're called, but Class 15
19 claims are paid in cash but only -- but at 25% of the allowed
20 amount. Correct, Mr. Willems?

21 MR. WILLEMS: That's correct, Your Honor.

22 THE COURT: All right.

23 MR. WILLEMS: And if I may, the -- the explanation
24 apparently got garbled somehow because that's not what I told
25 her daughter, that's not what's in our letter, and it's not

1 what I told her today.

2 THE COURT: Well, in any case, Ms. McQueen, there's
3 not going to be any bonds, payment through any bonds involved
4 in -- in the treatment of your payment of your claim.

5 MS. MCQUEEN: Okay.

6 THE COURT: Under the proposed treatment that the
7 city has in their stipulation and order, they propose to allow
8 your claim in the full amount of the claim.

9 MS. MCQUEEN: Okay.

10 THE COURT: Classified as a Class 15 convenience
11 claim. And then under the confirmed plan, a claim that falls
12 into that category is paid in cash, 25% of the allowed amount
13 of the claim. Did you read the stipulation and order that was
14 attached to the October 12 filing the city filed?

15 MS. MCQUEEN: Yes, I did.

16 THE COURT: All right. Well, you know, you don't
17 have to agree to it, but the question is, what is -- if you
18 don't agree to that, what is the -- what are you disputing
19 still?

20 MS. MCQUEEN: Because I'm -- I'm still not clear on
21 what -- what they're trying to give me. It doesn't -- okay.
22 In one instance it says you giving me the full amount, and
23 then on the other hand it says you giving me 25% of the
24 amount. I don't understand.

25 THE COURT: Well, there's two different things. One
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1 is what is the allowed amount of your claim. Now you filed
2 your claim, your proof of claim number 785 in the amount of
3 \$3,968.

4 MS. MCQUEEN: Yes.

5 THE COURT: The city proposes to agree to -- to that
6 being the allowed amount of your claim.

7 MS. MCQUEEN: Okay.

8 THE COURT: And then the question is well, okay,
9 that's an allowed claim in that amount 3,968. Now how is it
10 treated -- how must it be treated under the confirmed plan of
11 adjustment.

12 And there are many classes of claims, but the -- the
13 primary classes of unsecured claims are Class 14 and Class 15.
14 Class 15 the so-called convenience claims are claims that I
15 believe the -- the claims that are allowed in the amount of
16 what is it, \$25,000 or less, I believe.

17 MR. WILLEMS: That's correct, Your Honor.

18 THE COURT: Yeah. As to those the confirmed plan of
19 adjustment, Class 15 claims, says those claims will be paid in
20 cash at the -- at a rate of 25% of the allowed amount of the
21 claim.

22 So you have your allowed amount of the claim is 3,968
23 which is the amount that you -- full amount you put in your
24 proof of claim. The actual payment to you on that allowed

25 claim will be 25% of that in cash which the city calculates at
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1 \$992.50.

2 So there's two different things. One is how much is the
3 allowed amount of your claim and the other thing is how much
4 are you actually going to be paid on that allowed claim. And
5 the answer to that is, 25% of the allowed amount or \$992.50.
6 Does that answer your question?

7 MS. MCQUEEN: It does answer my question, but I
8 don't agree. I mean because that was time that I put in with
9 the city. That was my bank time so why wouldn't I get all of
10 my money from my bank time.

11 Plus I filed this before bankruptcy. So and it had went
12 to agreements. And it was said that I would be awarded that.
13 So why is it now that I wouldn't get my full amount and only
14 get 900. How would -- how could they break that down like
15 that?

16 THE COURT: The answer to that is because that's
17 what the confirmed plan of adjustment says. And that plan is
18 binding on everyone, the city and all creditors, including
19 you. That's the answer.

20 Not all -- lots of claims or most claims are being paid
21 at less than 100% of the amount of the claim that's allowed.
22 That's -- that's the nature of bankruptcy and what happens in
23 most bankruptcy cases.

24 And in this case we have a confirmed plan that is binding
25 on everyone including you and this is the class that it

1 appears to me where your claim belongs. And -- and Class 15
2 and so that's what the plan provides. That's the answer. So
3 you're -- you're -- I don't know what else I can say about it.

4 MS. MCQUEEN: But I wasn't -- but I filed before the
5 bankruptcy.

6 THE COURT: All right. Well, that doesn't matter.

7 MS. MCQUEEN: So why they are being allowed to put
8 me in bankruptcy.

9 THE COURT: Doesn't matter. If it's a claim that
10 arises before the filing of the bankruptcy that's just the
11 type of claim that is treated and in the -- the bankruptcy
12 plan that was confirmed.

13 So the question is, do you want to say anything else
14 about this. And you don't have to agree to anything. You can
15 say I disagree and I don't think it's right.

16 MS. MCQUEEN: I don't.

17 THE COURT: Whatever you want. But do you want to
18 say anything else though and then I'm going to make a ruling
19 here.

20 MS. MCQUEEN: I just disagree.

21 THE COURT: All right. Well, the city has modified
22 its forty-seventh omnibus objection with respect to the claim
23 of Beatrice McQueen, claim 785 to improve the treatment of the
24 claim and the city's proposal as reflected in the -- and

1 October 12, 2016 supplemental reply filed by the city at
2 docket 11617 is that Ms. McQueen's claim be allowed in the
3 full amount of the claim.

4 And so the city basically has -- has agreed to the amount
5 of the claim, the allowed amount of the claim as the amount
6 that's in the proof of claim that Ms. McQueen filed. And the
7 city proposes that that claim be classified and treated as a
8 Class 15 convenience claim under the confirmed plan of
9 adjustment and I -- I -- in my view that's absolutely correct
10 and that's how it should be classified and treated.

11 And that means that the claim will be paid at 25% in cash
12 of the allowed amount of the claim. So the proposed order
13 that was attached to the City of Detroit's supplemental reply
14 filed October 12 is in substance what the Court will enter and
15 in its ruling on this objection to the claim of Ms. McQueen.

16 The claim will be allowed as a Class 15 convenience claim
17 in the allowed amount of \$3,968 and paid in cash at 25% of
18 that which means \$992.00. And that's required under the
19 city's confirmed plan of adjustment.

20 So that's the ruling. Mr. Willems, I'll ask you to
21 please submit that proposed order that was attached to the --
22 as one of the exhibits to the October 12 filing. I'll make
23 some revisions, non-substantive revisions in it to reflect
24 today's hearing and the ruling today and so forth. But the --

1 document. Any questions about the order needed to be
2 submitted?

3 MR. WILLEMS: I do not have any questions, Your
4 Honor.

5 THE COURT: All right. I will -- I'll waive
6 presentment of that order and that's the ruling on this
7 matter. Thank you all.

8 MR. WILLEMS: Thank you, Your Honor.

9 THE COURT: All right. The next matter I want to
10 hear -- actually there's two matters that should be heard
11 together I think logically. And that is the -- the city's
12 motion at docket 11624 to determine rights to claim number 201
13 filed by -- filed by Michael Beydoun. And also the city's
14 objection to the claim of General Shale Brick Company which is
15 docket 11623.

16 These items -- these matters are obviously related so I
17 want to hear them together. So who's going to speak for the
18 city on these matters? Mr. Spinner.

19 MR. SPINNER: Good afternoon, Your Honor. Ron
20 Spinner on behalf of the city.

21 Your Honor, this started out as a somewhat complex matter
22 as you probably read, all these papers. We started off by
23 filing an objection to claim number 201, that's at docket
24 11662 held by Mr. Beydoun. An objection to claim 1075 as was

1 motion to determine rights to claim 201. And that was filed
2 at 11624.

3 The underlying gravamen is that there is a claim, there
4 are competing claimants for that claim, and our goal was to
5 try to resolve that in a manner that is both consistent with
6 the law and is also as -- as least burdensome for the city and
7 the Court as possible.

8 In response to claim 201, the objection was basically --
9 had to do with the calculation of interest. There was no
10 objection -- response to that objection, so the Court allowed
11 that, sustained that objection at 11664. That matter is
12 therefore not up today.

13 General Shale Brick, the holder of claim 1075 filed a
14 response to the city's objection to that claim, docket number
15 11646. The subject matter of the dispute was really the --
16 the legal treatment of the claim, 1075. We felt -- or General
17 Shale Brick as I understand it filed it in support of a
18 garnishment that it had in 2001, Mr. Beydoun's property.

19 The city's take is that because it's seeking property of
20 Mr. Beydoun and not of the city, no claim was necessary and no
21 claim should be allowed on that behalf. General Shale Brick
22 had a slightly different take on that.

23 But the net result of the filings at 11646 by General
24 Shale Brick in its response at 11667 of the city said

1 General Shale Brick is an unsecured claim and whether that be
2 1075 modified as the motion requests, or a new one created by
3 -- by the motion and 1075 being withdrawn and expunged really
4 is a difference that makes no difference.

5 And so I believe the parties have agreed that the
6 treatment should be determined by the motion. And that brings
7 us to the -- the main crux of the question today, the motion
8 to determine rights of claim 201.

9 To refresh the Court on how we got here, Michael Beydoun
10 was injured in an auto accident years ago. He obtained a
11 judgment against the city. The judgment was later augmented
12 with fees and costs. The city then filed for bankruptcy
13 protection.

14 Attorney Guzall filed a claim against the city for his
15 client, Mr. Beydoun in the amount of -- to protect the
16 judgment. We disagree with the way the interest was
17 calculated, but we resolved that with the objection to claim
18 201.

19 THE COURT: That claim 201 was filed I see in the
20 name of -- jointly of Mr. Guzall and Michael Beydoun.

21 MR. SPINNER: I think you're correct, Your Honor,
22 yes.

23 THE COURT: That's what it says, Michael Beydoun and
24 his attorney Raymond Guzall, III. That's the name of the
25 creditor in the proof of claim you attached to the motion.

1 MR. SPINNER: That's fair, Your Honor. And we --
2 and we actually understand that Mr. Guzall has a claim against
3 Mr. Beydoun's claim for attorney's fees as part of it. So we
4 understand that they're -- it's interrelated.

5 THE COURT: Do you view their -- their joint claim
6 -- claim of filing status to be such that whatever is to be
7 distributed to Michael Beydoun -- to be distributed on claim
8 201 to persons other than third party creditors like General
9 Shale is to -- to be distributed jointly to both and then it's
10 a matter for them, Mr. Beydoun and his attorney, Mr. Guzall to
11 figure out and if they can't agree for some State Court to
12 determine who gets what as between the two of them.

13 MR. SPINNER: Yes, Your Honor. Although it may not
14 come to that. Because we're trying to put a process as -- as
15 we've put in our papers that would allow the parties to, if
16 they can agree, solve all that in one shot. And if not, then
17 yes. Then the State Court would have to figure out what the
18 -- the appropriate distribution would be.

19 THE COURT: Well, I was referring to distribution as
20 between Mr. Beydoun and his attorney, Mr. Guzall. I wasn't
21 referring yet to the -- any issues regarding Kajy Development.

22 MR. SPINNER: Oh, sure, I understand.

23 THE COURT: Which we're coming to, I -- I assume
24 shortly. Anyway, go on. You were saying.

25 MR. SPINNER: Sure. There was a dispute that we
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1 filed in our original motion between Attorney Guzall and
2 Attorney Seifman apparently a dispute over attorney's fees.

3 We had proposed a -- a method of distribution that would
4 deal with that, however, Attorney Seifman was served with
5 these papers. I spoke to one of his counsel and I don't
6 believe -- he has not filed any papers. I don't believe he's
7 participating in this. So that claim which we -- which we
8 raised in the motion apparently is resolved and he will not be
9 participating.

10 THE COURT: Meaning he'll get nothing.

11 MR. SPINNER: Meaning he will get nothing.

12 THE COURT: Go on.

13 MR. SPINNER: Two parties filed garnishments against
14 Mr. Beydoun's claim number 201. General Shale Brick was the
15 first in time garnisher. There appears to be no dispute
16 against that. There's no dispute from Mr. Beydoun as to that
17 garnishment.

18 And that is the garnishment that led to the filing of
19 claim 1075. Kajy Development also filed a garnishment. It
20 did not file a proof of claim but because the city's position
21 is that they're going after property of Mr. Beydoun, not the
22 city, no claim was necessary.

23 Now both Attorney Beydoun through his attorney -- I'm
24 sorry, Beydoun and through his attorney Guzall and Kajy

1 this is that no one seems to object to General Shale Brick's
2 treatment as proposed under the motion.

3 We learned that Attorney Guzall has a contingency fee
4 arrangement which apparently will change how he distributes
5 that claim with Mr. Beydoun more than we had expected when we
6 first filed our motion. And there is apparently a valid
7 dispute between attorneys Beydoun and Kajy regarding the
8 validity of the garnishment.

9 And that's when we filed our docket -- our response at
10 docket 11668. We proposed a revised distribution starting
11 first with General Shale Brick since there is no objection
12 they do seem to be first in time. We propose to allow claim
13 1075 as a \$20,000 cash claim, and an unsecured claim for the
14 balance of \$7,271.94 fully and finally resolving any claim
15 that General Shale Brick would have against the city as -- as
16 regards to this particular claim.

17 The dispute --

18 THE COURT: Does everyone agree to that part of your
19 proposed order? And I -- we're referring I think just for
20 clarity to the revised proposed order the city filed as
21 Exhibit 1 to its reply in support of its motion regarding
22 claim number 201. It's docket 11668. Go on.

23 MR. COLUCCI: John Colucci on behalf of General
24 Shale, Your Honor. Yes, General Shale is in agreement with

25 that and no objection has been raised to me. And I understand
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1 from Mr. Guzall there is also no objection to General Shale's
2 claim as advanced in the State Court either. So really no
3 objection that I'm aware of.

4 THE COURT: Mr. Guzall, same question.

5 MR. GUZALL: Yes, Your Honor. On behalf of Mr.
6 Beydoun, Mr. Beydoun is not objecting to the documents filed
7 in regards to General Shale as to the -- as to their claim.

8 THE COURT: So --

9 MR. GUZALL: It's not objected to that claim.

10 THE COURT: Neither you as Mr. Guzall's attorney nor
11 Mr. -- as Mr. Beydoun's attorney, nor Mr. Beydoun object to
12 the -- at least the part of the order, the city's revised
13 proposed order that proposes -- what it proposes to do with
14 respect to General Shale Brick I guess it's Paragraphs 2 and 3
15 of that order. You don't -- neither of you object to that, is
16 that correct?

17 MR. GUZALL: You're talking about the document 11667
18 with the \$20,000 in cash and then --

19 THE COURT: 11668.

20 MR. GUZALL: Okay.

21 THE COURT: The city's reply.

22 MR. GUZALL: 11668.

23 THE COURT: That's part of its motion. I'll read it
24 to you. It says two, number two, the city will pay to General

1 General Shale Brick Company's claim number 1075 is allowed as
2 -- is allowed a Class 14 other unsecured claim in the city's
3 bankruptcy case in the amount of 7,271.94.

4 MR. GUZALL: Correct, Your Honor. And that's the
5 same thing that was stated in the -- in the objection at
6 11667. So and I apologize, Your Honor. I have both documents
7 in front of me, but yes, my client is not disagreeing with
8 General Shale's --

9 THE COURT: All right.

10 MR. GUZALL: -- coming in here and -- and claiming
11 those amounts.

12 THE COURT: Neither you nor your client, Mr.
13 Beydoun.

14 MR. GUZALL: I don't have an objection either, Your
15 Honor, no.

16 THE COURT: All right. Okay. So then the question
17 -- same question I put the same question then to Kajy
18 Development. That's Mr. Bapacker, correct?

19 MR. BAPACKER: That's correct, Your Honor. Afan
20 Bapacker on behalf of -- of Kajy Development

21 We would not have an objection being that General Shale
22 Brick's garnishment was personally timed to ours. Our
23 position is that -- different from -- I think would not allow
24 for us to even claim these -- any interest in what's being

25 given to General Shale Brick, so we have no objection to it.
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1 THE COURT: All right. So Mr. Spinner, let's come
2 back to you. Now we move on to the -- I gather what's
3 apparently still a dispute, or may still be a dispute between
4 Mr. Beydoun on the one hand and Kajy Development on the other
5 hand.

6 MR. SPINNER: That is correct. Taking a pause from
7 all, we've managed to narrow down what I think was one, two,
8 three, four, five or some -- four or five different claimants
9 down to basically one dispute remaining amongst three
10 claimants. So I think we -- we have made progress.

11 The dispute between Beydoun and Kajy does raise some
12 interesting questions. The city is unsure of the
13 jurisdiction. It is not entirely clear that the Court should
14 be deciding third party disputes over the validity of State
15 Court judgments and further it's not clear at all to us that
16 the Court should be distracted by these disputes at all.

17 So case law we think provides the answer. The original
18 case law of garnishments is as I found out, does not permit
19 garnishments at all. They find that they interfere with the
20 process of bankruptcy. And we cited NVLand, Inc. v Vogel, In
21 Re: Ocean Downs Racing Association at 164 BR 249. And also a
22 6th Circuit case under the Bankruptcy Act, Berman v National
23 Finance Company, In Re: Berman and Company, 378 F 2d 252. And
24 that's a 6th Circuit case from 1967.

1 are permitted so long as they can be accomplished and
2 accommodated without undue interference in the city or the --
3 the bankruptcy case in question and if the trustee agrees.

4 So here if it can be done basically by adjustment of
5 claims and if the city is willing which it is, if it can be
6 accomplished by the adjustment of claims when the garnishments
7 should be followed and honored and the citations for that were
8 In Re: Brickell, 282 BR 705. That is a bankruptcy case in
9 Southern District of Florida, 2005. And the appellant version
10 of the same Brickell v Dunn, In Re: Brickell, 142 F App 385 at
11 the 11th Circuit in 2005.

12 And of course if it turns out that the parties are going
13 to insist on having evidentiary hearings and -- and battles
14 over the ownership, we would go back to the rule that no
15 garnishments are allowed if they're going to interfere with
16 the case as -- as part of the Brickell case.

17 So we proposed that after the General Shale Brick claim
18 is allowed there is still \$2,266,021.12 that remains as a
19 Class 14 claim. We propose to allow the parties Beydoun,
20 Guzall, and Kajy to figure out if there's some way that they
21 can development that -- you know, parse that out to up to
22 three unsecured claims to replace claim 201. And so long as
23 the numbers do not exceed the amounts that the -- and
24 therefore increase the city's liability, we would have no

1 If they cannot come up with a consensual resolution, then
2 we would say that according to the case law, the -- the rule
3 should be that the garnishment should be not allowed in the
4 Bankruptcy Court. That does not deprive anybody of their
5 state law rights once the monies are ultimately disbursed.
6 They can go fight over it then.

7 But it would be an interference with the city's
8 Bankruptcy Court to hold evidentiary hearings and challenge
9 the validity of State Court judgments in this Court. And
10 that's the city's position with respect to claim 201.

11 THE COURT: A couple of questions. Most of the --
12 it seems to me most of the cases -- I looked at the Brickell
13 case, the 11th Circuit version of the Brickell case for
14 example. They seem to be talking about whether or not
15 Bankruptcy Courts should be allowed to or required to
16 recognize garnishments that are served on the trustee.

17 That is essentially post-petition garnishments in which a
18 creditor of the bankruptcy debtor seeks to garnish -- I'm
19 sorry a creditor of a creditor -- a creditor of a creditor in
20 the bankruptcy case seeks to garnish that creditor's
21 distribution that's coming to them in the -- in the bankruptcy
22 case from the trustee to satisfy a debt that the creditor
23 receiving distribution notice to the other creditor.

24 In this case what we're talking about are -- are

1 on the city.

2 MR. SPINNER: Uh-huh.

3 THE COURT: By creditors of Michael Beydoun, Kajy
4 Development, and General Shale Brick. And General Shale Brick
5 filed a proof of claim, 1075. Kajy Development did not file a
6 proof of claim as I understand it.

7 And I'm wondering if the -- if this -- if this matter of
8 garnishment and what to do with these garnishments rests on a
9 little different footing than -- than we might have in a
10 situation like Brickell where the trustee -- the issue is can
11 a -- can a trustee be served with a garnishment rather than a
12 debtor pre-petition serving the garnishment.

13 I'm wondering whether Kajy Development's failure to file
14 a proof of claim should result in the Court not recognizing
15 the garnishment but just leaving it to Kajy Development to
16 pursue whatever Beydoun gets in distribution of the bankruptcy
17 case just because Kajy didn't file a proof of claim. And --
18 and I know you've -- you've -- you started out this hearing by
19 -- by saying the city doesn't think Kajy was required to file
20 a proof of claim because they're -- they're just -- they're
21 going after property of Michael Beydoun and not the city.

22 But under the garnishment, Michigan garnishment statute
23 the -- and the Michigan Court Rules on garnishments, the city
24 has liability as a garnishee to the garnishing creditor,

25 doesn't it? Isn't that a claim against the city that Kajy --
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1 that arose in favor of Kajy pre-petition. And if so weren't
2 they required to file a proof of claim in order to have any
3 sort of recognition or benefit of that claim. Do you see what
4 I'm asking?

5 MR. SPINNER: I do, Your Honor. And we -- we
6 wrestled with this. I have to be honest with you, if you
7 looked at the case law on garnishments it's somewhat scarce
8 and not fully developed.

9 We thought about whether or not there was a claim. We
10 ultimately decided that this is where the city would go
11 because we felt that it was against property of the city and
12 not the city -- property of Beydoun and not the city itself.

13 I do recognize the -- the references you make and I
14 cannot say that's not a valid conclusion. It just -- after
15 weighing the choices we came up with the conclusion that we
16 did. We would not --

17 THE COURT: I mean both -- both approaches, the
18 city's view and -- and this approach that I've suggested in my
19 question which I'm --

20 MR. SPINNER: Yes.

21 THE COURT: I'm not ruling that way at this point.

22 MR. SPINNER: Of course.

23 THE COURT: I'm just asking. But -- but each
24 approach might lead ultimately to the same result which is

1 free to go chase whatever Beydoun gets from the bankruptcy
2 case in State Court as a means of, you know, under state law
3 collecting their judgment.

4 You proposed such an outcome essentially in your latest
5 proposed order as I understand it. But that's -- that would
6 essentially be what happens if Kajy and Beydoun cannot reach
7 some sort of agreement in this case on -- on what's to happen
8 with Beydoun's claim as against Kajy, right?

9 MR. SPINNER: Yes, Your Honor. I guess -- I guess
10 the way the city would take it is, Your -- Your Honor's
11 comments are well taken. Whichever approach you take, they do
12 tend to lend to the same result.

13 If there's a consensual settlement, the city is more than
14 happy to have Kurtzman Carson adjust the claims register
15 accordingly because it doesn't have a major impact on the
16 city, it's just an adjustment of claims and it will be paid in
17 due course.

18 The legal theory, both seem to end at the same place. If
19 they can't get there, this garnishment shouldn't be here. And
20 as far as city is concerned I think that's just fine.

21 THE COURT: Have you talked to counsel for Beydoun
22 and counsel for Kajy Development about this approach that you
23 proposed in your reply brief, proposed order?

24 MR. SPINNER: I have had a chance to talk to
25 Attorney Guzall. I have not have a chance to talk to

1 attorneys for Kajy.

2 THE COURT: I mean we'll hear from them of course.

3 MR. SPINNER: Of course.

4 THE COURT: But there's not, as far as you know,
5 there's not yet agreement on that approach.

6 MR. SPINNER: No, Your Honor. And that's part of
7 the reason Mr. Swanson expected that we would have this
8 hearing is because one question we anticipate you're going to
9 be asking is, do you attorneys agree with this and if you do
10 consider this resolved in the matter proposed and if not, what
11 else would you propose. So that's why we figured this hearing
12 would now be down to this limited issue which in the city's
13 estimation is still great progress from where we started.

14 THE COURT: All right. Did you want to say anything
15 else before we hear from the other attorneys?

16 MR. SPINNER: No, Your Honor.

17 THE COURT: All right. Mr. Colucci, I assume is
18 counsel for General Shale. You don't -- your client doesn't
19 care about this piece of the dispute.

20 MR. COLUCCI: No, Your Honor.

21 THE COURT: All right. Then Mr. Guzall, let me
22 hear from you next about this piece of the -- the puzzle.
23 Then we'll hear from Mr. Bapacker as counsel for Kajy
24 Development.

25 MR. GUZALL: Certainly. Thank you, Your Honor.

1 Your Honor, upon the filing by the City of Detroit, I
2 contacted City of Detroit attorneys and spoke with I believe
3 Mr. Spinner and indicated that I would reach out to Mr. Yaldo
4 in attempt to resolve the matter prior to having to engage the
5 Court any further and waste the Court's time.

6 I did in fact reach out to Mr. Yaldo. I sent him an
7 email with a proposal to attempt to just panel the matter
8 without further litigation. I have not heard back from Mr.
9 Yaldo. Mr. Yaldo filed a document today, a consent judgment.

10 THE COURT: I saw that.

11 MR. GUZALL: Sure, which was faded on the back and I
12 couldn't read the signature of what he claims to be my
13 client's signature, so I contacted his office about ten or 15
14 minutes after the filing which is when I opened the email and
15 saw the email. I left a message, I was not able to get a hold
16 of anybody there. I asked for a return phone call.

17 It's my client's position and I think it's within the
18 affidavit that there was an understanding that both parties in
19 this Kajy Development case were going to walk away and neither
20 was going to pay the other any monies. And so this consent
21 judgment is as I understand, new to my client, has not seen
22 this document, and that's why I asked for a -- a clearer copy
23 to illustrate -- show the signature of my client allegedly on
24 this document.

1 THE COURT: Well, is there any doubt that this
2 consent judgment was in fact entered by the circuit -- Wayne
3 County Circuit Court as indicated by the file stamp and Judge
4 signature on the document?

5 MR. GUZALL: I can't answer that question. I wasn't
6 a part of this at all, I don't know.

7 THE COURT: What you're worrying about it sounds --
8 is it just that perhaps Mr. Beydoun in fact did not sign and
9 agree to this consent judgment? Or I'm sorry, yeah, Mr.
10 Beydoun did not sign and agree to this?

11 MR. GUZALL: That is Mr. Beydoun's position. I was
12 not involved. I don't know about any of these documents.
13 I've never seen them. I don't --

14 THE COURT: He says -- he says he didn't sign this
15 consent judgment?

16 MR. GUZALL: That's his position, yes.

17 THE COURT: All right.

18 MR. GUZALL: To my understanding that he didn't,
19 yeah. That he thinks this was cut and pasted or copied on
20 here. He's never seen this and didn't sign it. It was his --

21 THE COURT: So Mr. Beydoun's position, bottom line
22 position essentially is, is that -- and I think as you argued
23 in your papers that you filed that the pre-petition
24 garnishment by Kajy Development served on the city is not

25 proper. Shouldn't be valid, should be ignored.

1 MR. GUZALL: Correct, Your Honor. Agree with the --
2 the arguments that were made and -- and some of the
3 suppositions that were made by the Court in that there was no
4 proof of claim filed, number one. And number two, even if
5 there was the law cited by the city there's -- there's no
6 objection to that law by Mr. Beydoun.

7 But again in an attempt to settle all of this, I reached
8 out to Mr. Yaldo and I -- I spoke with the city's attorneys
9 and stated I didn't have an objection -- my client didn't have
10 an objection to trying to work things out with Mr. Yaldo and
11 his client over the next couple weeks to sort of try to come
12 to some sort of agreement just to quash everything and end
13 everything.

14 So that's what I've attempted to do, Your Honor, in terms
15 of reaching out. And I've also discussed with the city
16 attorneys filing a proposed order in regards to the attorney
17 fees that are claimed by my law firm so that may go much more
18 simply through the Court system as well if as I understand in
19 terms of my conversations with the City of Detroit.

20 But prior to doing that, trying to work out this
21 situation with Kajy. And if we can't then my client's
22 position is on point with what the Court indicated just here
23 today and the City of Detroit that Kajy Development is then
24 just going to have to search for another avenue to come after

1 bankruptcy is -- is over, or outside of the Court -- the
2 Bankruptcy Court if you will.

3 THE COURT: Is it your view on behalf of Mr. Beydoun
4 that Kajy Development was required to file a proof of claim in
5 the Detroit bankruptcy case in order to have its garnishment
6 based claim recognized in any way?

7 MR. GUZALL: Yes, Your Honor.

8 THE COURT: Why do you say that? Why do you say
9 that's so?

10 MR. GUZALL: Well, Your Honor, Shale filed a proof
11 of claim. And as Your Honor -- Your Honor indicated, a proof
12 of claim gives everybody notice that ,including City of
13 Detroit, that there is this proof out there. It's sort of a
14 surprise at the eleventh hour that Kajy is now coming in and
15 saying oh, well, we're owed money as well.

16 It holds everything up, it ties everything up, and I
17 agree with the Court's, you know, questions and -- and points
18 prior that there's just -- there's no proof filed and
19 therefore it shouldn't be deemed valid by the Court.

20 THE COURT: All right. Anything else you want to
21 say?

22 MR. GUZALL: No, Your Honor.

23 THE COURT: All right. Mr. Bapacker on behalf of
24 Kajy, what would you like to say?

1 the Court's attention to Kajy's motion or response to the
2 motion to allow claims.

3 There's a settlement agreement also attached that it was
4 incorporated as part of making out the consent judgment that I
5 attached. And -- and I'll just clarify for the Court. I
6 filed that consent judgment not realizing that it wasn't
7 originally filed with the papers in the response pleadings
8 that we -- that we had filed to the city's motion.

9 And I -- I noticed that this morning when I was prepping
10 for my hearing, so I wanted to upload it so that everybody
11 would have a copy of it. But the settlement agreement
12 purports to be signed by Michael Beydoun as well and there's a
13 notary stamp there.

14 The consent judgment that I have that doesn't really
15 clearly show a signature and I'll admit that because it's
16 pretty -- pretty apparent there. But it was signed by the
17 Circuit Court and I'm sure a true copy exists somewhere.

18 As far as the dispute, I really don't see it. There's a
19 valid State Court judgment that was entered. That State Court
20 judgment -- there was a garnishment that was issued to Mr.
21 Guzall's office that was also attached to our motion that that
22 was issued way before, I believe, even this bankruptcy was
23 filed if I see --

24 THE COURT: I didn't see, maybe I missed it, but in
25 the exhibits attached to your response to the city's motion,

1 docket 11657, I didn't see a writ of garnishment directed to
2 the City of Detroit as a garnishee. Is there one in there?

3 MR. BAPACKER: There is one -- yeah, I'm sorry, Your
4 Honor. There is one, it wasn't attached to our motion, but it
5 is attached to the city's motion. I believe it's the last
6 exhibit in the city's motion.

7 THE COURT: Oh, all right. Hold on. Oh, I see,
8 yeah. Pdf Page 49 of 49, I think.

9 MR. BAPACKER: Yes, I believe it's the last page.

10 THE COURT: Okay. So that was issued on May 20,
11 2011.

12 MR. BAPACKER: That's correct. And on the same date
13 another writ of --

14 THE COURT: A little more than two years before the
15 city filed its bankruptcy case.

16 MR. BAPACKER: That is correct. Barry Seifman was
17 issued the same garnishment as well as Mr. Guzall was issued
18 the same writ of garnishment. Those were attached to our
19 motion on the same day. So I don't see this -- the statements
20 made here today are -- I'm not aware of the judgment or not
21 aware of this claim or the garnishment where there's clear
22 evidence that they received them and actually responded to and
23 signed the -- the disclosures that are -- were submitted back
24 to the Third Circuit Court and filed them with the Court.

1 THE COURT: Did the city file a disclosure?

2 MR. BAPACKER: I believe that is the -- what's
3 attached to the city's motion is the response, the disclosure
4 there. Let me just go back to it here.

5 THE COURT: Well, I didn't catch that.

6 MR. BAPACKER: If you -- the garnish -- the request
7 and a writ of garnishment, I don't see the disclosure
8 actually, it's just a request and writ of garnishment that was
9 filed.

10 THE COURT: Did the city file a disclosure?

11 MR. BAPACKER: I don't know that they did, I'm not
12 sure.

13 THE COURT: With the State Court, I mean?

14 MR. BAPACKER: Yeah. I don't know that they did.

15 THE COURT: Did the city ever become liable under
16 this garnishment as a garnishee under the Michigan Court Rule
17 under this garnishment statute?

18 MR. BAPACKER: If they don't file a disclosure
19 within the allotted time then they would become liable, but
20 only after a default is entered and the judgment is entered.
21 And that's a point as to -- what I was trying to make with
22 when it relates to the State Court, a garnishee becomes liable
23 for not fulfilling a garnishment disclosure responding and
24 submitting the writ or -- or submitting the disclosure and

25 then a default could get entered against the garnishee and
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1 then a motion for entry of default and a subsequent judgment
2 would get entered against the garnishee. None of that
3 happened to my understanding in -- in my review of the
4 documents. So I -- we don't believe this --

5 THE COURT: Well, but isn't it correct that under
6 the Michigan Court Rule, you know, with garnishments as I
7 understand it, it's Michigan Court Rule 3.101(g) which is
8 titled liability of garnishee.

9 Isn't it correct that the garnishee in this case the City
10 of Detroit under this court rule would -- was -- would have
11 become liable for under sub part (1)(d) of that 3.101(g),
12 liable for all debts, whether or not due, owing by the
13 garnishee, that's the city to the defendant, that's Beydoun,
14 when the writ is served on the garnishee with certain
15 exceptions.

16 So didn't that create a debt owing from the City of
17 Detroit as garnishee to your client, Kajy Development, LLC, as
18 soon as the writ was served on -- the writ of garnishment was
19 served on the city back in May 2011?

20 MR. BAPACKER: My understanding is if not paid. But
21 I guess that's not what the court rule says, or if not
22 responded to.

23 THE COURT: Well, you know they didn't pay.

24 MR. BAPACKER: Yeah.

25 THE COURT: I assume everybody agrees they didn't
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1 pay.

2 MR. BAPACKER: Well, yeah, they haven't paid, but
3 our our idea is they will pay something eventually. And our
4 -- our claim is against that something. And we're not --
5 we're not looking at it from the perspective that we have any
6 claim and that's what our response says. We don't feel that
7 -- or Kajy feels that they don't have a claim against the city
8 at all and that's why no claim was ever filed.

9 THE COURT: What is -- is there a mechanism that's
10 fair and appropriate here to all parties by which the State
11 Court in which the garnishment -- the judgment was issued, the
12 garnishment was issued would decide any disputes between Kajy
13 Development and Beydoun, Michael Beydoun about this dispute
14 between them about whether there's a valid judgment and a
15 valid garnishment, those sorts of things?

16 MR. BAPACKER: The only mechanism I see is Mr.
17 Beydoun filing a motion to set aside that judgment. It was a
18 consent judgment and if he's claiming fraud, it's a ten year
19 old judgment which he had notice of in 2011.

20 THE COURT: Maybe I didn't -- I wasn't clear enough
21 in my question.

22 MR. BAPACKER: Yeah.

23 THE COURT: What I'm -- what I'm getting at is you
24 know, I scratch my head and say why should this Court decide

25 this dispute between these two creditors -- between these two
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1 parties, neither of whom are debtors in the bankruptcy case
2 and not instead find a way to leave it to the State Court.

3 MR. BAPACKER: Yeah.

4 THE COURT: To decide that issue because that's
5 typically, and you know, I think appropriate -- appropriately
6 where it belongs.

7 MR. BAPACKER: I would agree with that but we're
8 actually not asking this Court to decide the dispute. We're
9 asking this Court to grant a transfer of rights to the -- to
10 the claim that was filed by Michael Beydoun to my client
11 because of the garnishment that was served upon the city.

12 THE COURT: That's a decision on the dispute. That
13 says -- that's a decision premised on the proposition that the
14 garnishment is valid because the judgment is valid.

15 MR. BAPACKER: That's correct.

16 THE COURT: Which is -- which are disputed by -- by
17 Michael Beydoun. You may think the dispute is without merit
18 or even frivolous --

19 MR. BAPACKER: Yeah.

20 THE COURT: -- but it's -- it's there. And so some
21 Court may have to decide that dispute.

22 MR. BAPACKER: Sure.

23 THE COURT: And I don't -- it doesn't strike me that
24 this is the Court that ought to do that.

1 agree, but I don't -- I don't agree that the disposition of
2 honoring a State Court judgment that is valid and has been
3 entered for over -- well, close to ten years now, is outside
4 this Court's jurisdiction which I've -- I've seen this Court
5 do before.

6 I think that's really what we're asking for is for this
7 Court to honor the State Court judgment that was entered. The
8 garnishment is just an extension of that and -- and a transfer
9 of claim I think is -- is within this Court's jurisdiction to
10 -- to transfer that portion of that claim to my client.

11 THE COURT: All right. Anything else you'd like to
12 say?

13 MR. BAPACKER: Nothing else, Your Honor.

14 THE COURT: Mr. Spinner, back to you. Did you want
15 to say anything further here? Actually, Mr. Bapacker, I
16 didn't -- I should have asked you this before I -- I let you
17 go. And that is, you've seen this proposed order the city
18 attached to their reply brief as part of this motion. It's at
19 docket 11668, I assume.

20 MR. BAPACKER: Right.

21 THE COURT: Does Kajy agree or not agree with that
22 proposed order and approach? And -- and I don't mean just the
23 part dealing with General Shale --

24 MR. BAPACKER: Yeah.

25 THE COURT: -- but all the rest of it.
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1 MR. BAPACKER: Yeah. We don't agree with treatment
2 of our claim as a -- as a Class 14 claim, only because that
3 would just dilute our -- our claim and we'd only get a
4 percentage of the payment.

5 Our -- our position is that we should get a transfer of
6 whatever claim Beydoun gets. And that may or may not fully
7 satisfy our claim, but I think it definitely --

8 THE COURT: Well, Beydoun is going to get a Class 14
9 claim, isn't he?

10 MR. BAPACKER: He's going to get a Class 14 claim.
11 We want a full claim against his Class 14 claim as that's what
12 the garnishment would -- would yield and the garnishment
13 rights we have against any asset he receives.

14 So if he were to receive for example if I throw out a
15 number of 10% and receive \$226,000, then our claim would be
16 fully satisfied through that. And that's the issue we have
17 for -- for treating our claim as a Class 14 claim.

18 THE COURT: Oh, I see. You're worried that -- well,
19 I think I understand your point.

20 MR. BAPACKER: Yeah. It would just dilute our claim
21 and then we -- we would --

22 THE COURT: What about the rest of the order, the
23 other aspects of it.

24 MR. BAPACKER: I believe there is also --

25 THE COURT: And basically Paragraph 7 of this
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1 proposed order by the city says if -- if Beydoun and Kajy
2 don't reach an agreement by November 30th on these matters, the
3 garnishment filed by Kajy Development will be ignored.

4 MR. BAPACKER: I don't think --

5 THE COURT: Isn't that what 7, Paragraph 7 says?

6 MR. BAPACKER: Yeah. We wouldn't agree with them.
7 In addition I -- I should only agree with the characterization
8 that it's actually difficult for the city to -- to pay this
9 claim. As -- as I've stated, I don't think there's any
10 dispute here for this Court to decide on -- on the issue of
11 whether or not the judgment is valid. We're talking about a
12 ten year old judgment.

13 So the city would basically be cutting two checks out,
14 whether it's multiple claims or whether it's paying Mr.
15 Beydoun and then paying my client through the transfer of
16 claim. So I don't see any difficulty here at all. It's --
17 it's just a matter of how it's paid and how much -- how much
18 of it is paid to my client.

19 THE COURT: Did you want to say anything about the
20 question I asked Mr. Spinner which is essentially why Kajy
21 Development was not required to file a proof of claim in this
22 bankruptcy case.

23 MR. BAPACKER: Our -- our -- our position is that we
24 weren't required to file a proof of claim.

25 THE COURT: And why not? Why not?

1 MR. BAPACKER: We don't see ourselves as creditors
2 of the -- of the Detroit -- of the City of Detroit. And I
3 guess --

4 THE COURT: That's sort of the point of my question
5 about the Michigan Court Rule --

6
7 MR. BAPACKER: Yeah.

8 THE COURT: -- that I asked you earlier. Under the
9 Michigan Court Rule, Michigan law as garnishee here it says
10 the city is liable to a certain extent to -- to your client.
11 So --

12 MR. BAPACKER: That is correct. The liability --

13 THE COURT: Your client is a creditor of the city,
14 you had a claim against the city before the bankruptcy was
15 filed as I understand it based on this garnishment. Why
16 didn't -- why wasn't your client required to file a proof of
17 claim like every other creditor against the city?

18 MR. BAPACKER: Well, but you're -- you're taking the
19 code section as far as liability and extending that to treat
20 my client as a creditor. I think those are two different
21 things within the context of what we're talking about.

22 THE COURT: Doesn't a judgment creditor become a
23 creditor of the garnishee under Michigan Court Rule 3.101(g)?

24 MR. BAPACKER: If -- my understanding is that's true
25 if certain -- if a judgment has been entered against a

1 judgment creditor. Because a judgment has to be entered
2 against a judgment creditor in order to --

3 THE COURT: Well, that's how you -- that's how you
4 get a judgment on a claim.

5 MR. BAPACKER: That's correct.

6 THE COURT: It doesn't create the claim, does it?
7 Doesn't 3.101(g)(1) of the Michigan Court Rules say the
8 garnishee is liable.

9 MR. BAPACKER: That's correct.

10 THE COURT: For all debts whether or not due owing
11 by the garnishee to the defendant when the writ is issued on
12 the garnishee.

13 MR. BAPACKER: That's correct. But the point is, I
14 don't believe that makes our client a creditor of the -- of
15 the City of Detroit. If -- if liable, there's an asset that
16 hold the liability is -- is satisfied when that asset is
17 turned over. I don't see how -- how both of those things --

18 THE COURT: Yeah, but let's take the hypothetical.
19 Forget about bankruptcy for a minute. Assume there's no
20 bankruptcy.

21 MR. BAPACKER: Uh-huh.

22 THE COURT: That you serve a writ of garnishment on
23 the city.

24 MR. BAPACKER: Sure.

25 THE COURT: The city ignores it.

1 MR. BAPACKER: Sure.

2 THE COURT: And they pay everything to Beydoun, your
3 judgment debtor, your client's judgment debtor.

4 MR. BAPACKER: Sure.

5 THE COURT: Under the Michigan Court Rules the
6 statute on garnishments you have a claim against the city for
7 the full amount of your debt up to the amount of whatever the
8 city owed to Beydoun when they were served with the writ,
9 don't you?

10 MR. BAPACKER: Yeah, sure. But in the hypothetical
11 they've already -- they haven't paid it in -- in this
12 scenario. The asset still is held by the city. The claim
13 hasn't been paid.

14 In my opinion the liability doesn't extend to confirm my
15 client as a creditor until the disposition of that asset. And
16 right now we're talking about a claim that's the asset. Our
17 claim is against that asset.

18 They're not a creditor until that asset has been disposed
19 of one way or another. So I -- I just don't see --

20 THE COURT: Well, and roughly a little more than two
21 years passed from the issue -- the service of the writ on the
22 city and the city's bankruptcy case. What happened during
23 that two year period?

24 MR. BAPACKER: I -- I have no idea. I wasn't
25 involved in this during the two year period.

1 THE COURT: I know part of what apparently was going
2 on was the city was appealing the judgment that they obtained
3 against it which apparently was only that appeal process was
4 only confirmed -- or concluded post-bankruptcy.

5 MR. BAPACKER: Sure.

6 THE COURT: But there was a judgment against the
7 city, right? That -- that was entered well before the
8 petition date, bankruptcy --

9 MR. BAPACKER: Beydoun's judgment against the
10 city's. I don't believe --

11 THE COURT: Beydoun's right against the city.

12 MR. BAPACKER: Yeah.

13 THE COURT: Yeah.

14 MR. BAPACKER: Yeah, that's correct, yeah.

15 THE COURT: All right. Anything else you want to
16 say?

17 MR. BAPACKER: Nothing else, Your Honor.

18 THE COURT: All right. Thank you. Mr. Spinner, I'm
19 sorry, I -- I called on you earlier. What do you want to say
20 further if anything?

21 MR. SPINNER: It's quite all right, Your Honor.
22 Your Honor, all roads lead to Rome it looks like. No matter
23 which theory of the two theories you espouse, I think we end
24 up with the proposed order as a -- as a reasonable resolution.

1 claim against the city and no proof of claim was filed, then
2 Kajy's garnishment should be ignored. But again the parties
3 should come up with a reasonable agreement, nobody of course
4 is going to object to that and so our order would be
5 appropriate.

6 If it turns out that they didn't have to file a proof of
7 claim and the garnishment is -- is valid as it is, but there's
8 a valid dispute right as you pointed out, Your Honor, no
9 matter how frivolous it is or not frivolous, the city is not
10 here to take a position on that and it merely complicates the
11 bankruptcy.

12 In that case, case law says it should be ignored unless
13 of course the parties can reach a settlement that makes it
14 relatively simple to implement. So in both cases no matter
15 how you get there or now you go you end up in the same place.

16 My only other observation from -- from listening to
17 Kajy's argument today, is that Kajy said I don't want a Class
18 14 claim, I want to be paid in full. Well, there's really
19 nothing the city can do because the city is going to be
20 awarding Class 14 claims.

21 Until actually they get resolved out a -- a numerator or
22 denominator fixed and a cash dollar amount is fixed, the city
23 is not going to be able to write a check to these people even
24 if they wanted to.

1 they have to wait until the claim is paid to Mr. Beydoun and
2 go after them because there's no way for us to know that until
3 pretty much all of these claims are resolved.

4 One way or the other we end up in the same place. Either
5 the garnishment should be resolved consensually, or it should
6 be ignored. And since they all end up in the same place, Your
7 Honor, it almost becomes irrelevant to the city of which path
8 is chosen.

9 The only questions that the city wants to make sure of is
10 that when we're done, we pay off the General Shale garnishment
11 and General Shale has no further claims against the -- the
12 city's claim of 201. And whatever we do resolving these
13 garnishments the total exposure of the city is no more than
14 the remainder of claim 201. As long as the city is not
15 otherwise inconvenienced, this Court's not inconvenienced,
16 we're not going to object to giving the parties a chance to
17 resolve things early, but otherwise we would say leave them to
18 their State Court remedies. Do you have any questions for me,
19 Your Honor?

20 THE COURT: No further questions. Thank you. One
21 moment. All right. Thank you all. I'm going to rule on this
22 now.

23 And this is -- I view that this motion filed by the city
24 -- City of Detroit's motion to determine rights to claim

1 is resolved by agreement of all of the parties who have
2 responded and who are concerned with that motion and affected
3 by it in part.

4 And that part is -- concerns the part that essentially it
5 comprises the relief provided in Paragraphs 2 and 3 of the
6 city's proposed order that was attached to the city's reply
7 brief filed November 10 at docket 11668. That is the
8 provisions regarding General Shale Brick Company and its
9 treatment and participation in this claim 201 and how they're
10 to be dealt with and treated.

11 And so to that extent the motion is resolved by agreement
12 of the parties and I will approve that agreed resolution or
13 partial resolution. That resolution, or settlement, or
14 agreement also of course resolves the city's -- in -- in -- in
15 its entirety the city's objection to the claim filed by
16 General Shale Brick Company, claim 1075. That claim objection
17 was filed at docket 11623 and was -- was heard today as part
18 of this.

19 The rest of -- or unresolved portion or aspects of the
20 city's motion to determine rights to claim number 201 concern
21 Kajy Development, LLC and a dispute -- a dispute between --
22 that continues to exist between Michael Beydoun on the one
23 hand and presumably also is attorney Mr. Guzall on the one
24 side on the one hand and Kajy Development, LLC on the other

1 The claim number 201 at issue, a copy of that is attached
2 to the city's motion, docket 11624 as Exhibit 6-1, was a claim
3 in the box where it says name of creditor, it says Michael
4 Beydoun and his attorney Raymond Guzall, III. So it's a claim
5 filed jointly by Mr. Beydoun and his attorney, Mr. Guzall.

6 And I -- I viewed those parties as -- and those claimants
7 under that proof of claim as contesting the -- and opposing
8 and the Court granting any sort of relief in favor of Kajy
9 Development, LLC. Those parties take the position as they
10 have argued in Mr. Beydoun's written papers and in the hearing
11 today that -- that Kajy Development, LLC is not a legitimate
12 judgment creditor or a creditor otherwise of Mr. Michael
13 Beydoun individually. And that if there was a judgment
14 obtained against -- and this -- there appears to have been a
15 judgment obtained and filed in State Court long before the
16 city's bankruptcy case was filed. That's that consent
17 judgment that was filed today as an exhibit by Kajy
18 Development.

19 That that judgment is invalid because Mr. Beydoun --
20 according to Mr. Beydoun he did not sign off. That's not his
21 signature on the last page of that document consenting --
22 purporting to consent to entry of the judgment. And therefore
23 the post-judgment garnishment writ that was issued and served
24 on the city by Kajy Development in an effort to collect that

1 2011 roughly, is invalid.

2 So Mr. Beydoun and Mr. Guzall on the one hand contend
3 that Kajy Development, their garnishment, their pre-bankruptcy
4 petition garnishment against the city should be ignored
5 completely and Kajy should get nothing.

6 The Kajy Development of course takes quite the opposite
7 view and contests that and contends its -- its consent
8 judgment is valid, that its garnishment served on the city in
9 May 2011 is valid and therefore it should -- its garnishment
10 writ should be recognized and given effect as part of the
11 Court's treatment of claim number 201.

12 This dispute between Mr. Beydoun and Mr. Guzall on the
13 one hand and Mr. -- and Kajy Development, LLC on the other
14 hand is a dispute that in my view clearly should be decided by
15 the State Court. That is the dispute about the validity of
16 the consent judgment, the validity of any garnishment writ,
17 especially the -- the dispute about the validity of the
18 consent judgment that was entered in the State Court. That
19 should be decided by the State Court, not by this Court in the
20 bankruptcy case of the City of Detroit.

21 And for this Court, this Bankruptcy Court to have to
22 decide that dispute in my view would unnecessarily complicate
23 the administration of the bankruptcy estate in the City of
24 Detroit case within the meaning of that concept of unnecessary
25 complication that's referred to by the 11th Circuit, U.S. Court

1 of Appeals in the Brickell case cited by the city, In Re:
2 Brickell, 142 F App 385 at Page 390, the 11th Circuit in a
3 decision from 2005 held that garnishments, in this case
4 garnishment of a bankruptcy trustee, can be recognized or
5 ignored but the key consideration is according to the Court
6 the following.

7 "While a garnishment should not be allowed if it
8 unnecessarily complicates the administration of the bankruptcy
9 estate."

10 In my view that is exactly what will occur here if this
11 Court allows and gives recognition to and attempts to provide
12 relief to Kajy Development based on its pre-petition
13 garnishment writ served against the City of Detroit. And for
14 that reason the Court is not going to grant any relief in
15 favor of Kajy Development based upon its pre-petition
16 garnishment writ served on the City of Detroit.

17 And essentially is going to ignore the writ of
18 garnishment served by Kajy Development, LLC on the City of
19 Detroit for purposes of determining the rights of competing
20 parties to claim number 201 filed by Mr. Beydoun and Mr.
21 Guzall jointly and any distributions in the bankruptcy case of
22 the City of Detroit based on that claim.

23 There's a -- a second reason, however, and perhaps a more
24 fundamental reason why the Court is ruling this way. And that

1 proof of claim in the City of Detroit bankruptcy case and to
2 do so by the claims bar date and did not do so. It was
3 required to file a claim in the City of Detroit case in my
4 view for its garnishment writ to be recognized because well
5 before the filing of the City of Detroit bankruptcy case in
6 July 2013, this writ of garnishment by Kajy Development had
7 been served upon the city. That happened back in May 2011 as
8 Page 49 of -- pdf Page 49 of the city's motion shows.

9 And under the applicable Michigan statutes and court
10 rules, the service of that writ on the City of Detroit made
11 Kajy Development, LLC a creditor of the city and gave it a
12 claim against the city which obviously arose well before the
13 City of Detroit's bankruptcy case was filed.

14 So Kajy Development had a pre-petition claim against the
15 City of Detroit by virtue of its garnishment writ. Among
16 other Michigan authorities that demonstrate this is, as I
17 pointed out in the questioning of counsel in today's hearing,
18 Michigan Court Rule 3.101(g)(1), sub part (d) of which, which
19 says, it's captioned liability of garnishee, the City of
20 Detroit of course was the garnishee here.

21 It says, subject to the provisions of the garnishment
22 statute and any set off permitted by law or these rules, the
23 garnishee is liable for (d), "all debts whether or not due
24 owing to the garnish -- owing by the garnishee to the

1 certain -- with certain exceptions not applicable here.

2 So from the moment of the service of the writ of
3 garnishment on the City of Detroit by Kajy Development, LLC in
4 May 2011, the city had a liability to Kajy Development based
5 on that garnishment writ and Kajy Development, LLC had a claim
6 against the City of Detroit based on that garnishment writ
7 whether it was contingent or non-contingent, or matured or
8 unmatured, liquidated or unliquidated, all for example because
9 of the pendency of an appeal by the City of Detroit which
10 apparently only ended adversely to the city after the filing
11 of the bankruptcy.

12 It was a pre-petition claim and therefore Kajy
13 Development, LLC had -- had an obligation if they wanted to
14 share in any way in this bankruptcy -- distributions in the
15 bankruptcy case to timely file a proof of claim.

16 The other garnishing creditor against the city that's
17 involved here with the claim against the claim of Mr. Beydoun
18 and Mr. Guzall, of course, General Shale Brick, did file a
19 timely proof of claim in this bankruptcy case. And so they
20 are being treated differently than Kajy Development. At least
21 that is an important reason why they're being treated
22 differently and why they stand in contrast to Kajy
23 Development, LLC.

24 What this means is that in addition to the -- the

1 3 of the city's reply brief proposed order, I'm not going to
2 include in my ruling and in the order I'm going to enter, any
3 of the other provisions of that proposed order that have to do
4 with in any way giving time for Kajy Development and Michael
5 Beydoun to reach a settlement, or offer any prospect in the
6 future of any sort of recognition of the garnishment writ of
7 Kajy Development.

8 Rather the order -- the city must submit a proposed
9 revised order which after providing for the treatment of
10 General Shale Brick that's in Paragraph 2 and 3, essentially
11 jumps down to the bottom line of Paragraph 7 of the order
12 which says that claim 201 will be allowed as a Class 14 other
13 unsecured claim in the amount stated there. Instead of saying
14 owned by Michael Beydoun it should say owned -- owned by
15 Michael Beydoun and his attorney, Raymond Guzall, III since
16 both of them jointly filed as creditors the claim 201.

17 And the order should also provide that the garnishment
18 filed by Kajy Development, LLC against the city is of no
19 effect, no further effect in the City of Detroit bankruptcy
20 case.

21 Now this ruling and this outcome and this order in my
22 view obviously do not prevent Kajy Development, LLC as a
23 judgment creditor of Michael Beydoun from seeking to collect
24 its judgment from Mr. Beydoun from any available assets or

1 Mr. Beydoun actually receives as a result of claim 201 in the
2 City of Detroit bankruptcy case once Mr. Beydoun receives
3 them.

4 If and after Mr. Beydoun receives them in whatever amount
5 he receives them, then it's just another asset of Mr. Beydoun
6 that subject to any applicable state exemption laws, a
7 judgment creditor like Kajy Development, LLC can go after and
8 seek to collect from in the State Court system. But that's
9 different than saying that Kajy Development, LLC has
10 garnishment -- has rights against the City of Detroit as a
11 garnishee based on its garnishment writ from 2011.

12 My ruling is it does not in this bankruptcy case and for
13 purposes of distribution on claim 201 in this bankruptcy case
14 for the reasons that I have stated. So the motion is granted
15 in part to the extent of the relief I've described. Mr.
16 Spinner, I'll ask you to revise the order and submit the
17 revised order consistent with what I have ruled and I'll waive
18 presentment of that just to save some time and I will of
19 course carefully review the order when you submit it. Do you
20 have any questions about the form of the order needed?

21 MR. SPINNER: Only one minor clarification, Your
22 Honor. You repeatedly referred to the relief in Paragraphs 2
23 and 3. We would request that it be 2, 3, and 4 because 4 also
24 ends General Shale Brick's --

1 MR. SPINNER: Other than that we understand, Your
2 Honor.

3 THE COURT: All right. All right. Well, thank you
4 all and that concludes this matter.

5 MR. SPINNER: Thanks, Judge.

6 THE COURT: Just a moment. I want to hear next two
7 matters that are related, somewhat related. Actually no, I
8 don't. The matter I want to hear next is the city's objection
9 to the claim of claimant Steven Wolak.

10 MR. SWANSON: Good afternoon, Your Honor. Marc
11 Swanson on behalf of the city.

12 MR. KILPATRICK: Good afternoon, Your Honor.
13 Richardo Kilpatrick on behalf of the trustee for the Steven
14 Wolak estate, Karen Evangelista.

15 MS. ARNDT: Good afternoon, Your Honor. Stephanie
16 Arndt on behalf of the estate of Christopher Wolak.

17 THE COURT: All right. One second, please. All
18 right. Thank you. Go ahead, Mr. Swanson.

19 MR. SWANSON: Thank you, Your Honor. The first kind
20 of threshold issue on this matter is whether the Fieger law
21 firm had any right whatsoever to respond to the city's
22 objection to Mr. Wolak's claim.

23 The trustee as the Court probably noted, filed a claim of
24 interest in the claim and the city outlined in its reply brief

25 the Fieger firm did not have the right to assert a response to
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1 this objection because it has not been retained in the
2 bankruptcy estate and its claim is -- is property of Mr.
3 Wolak's bankruptcy estate.

4 THE COURT: Well, I can certainly see how the
5 Chapter 7 trustee in the bankruptcy estate in the bankruptcy
6 of Mr. and Mrs. Wolak has an interest in the outcome of this
7 dispute, this claim objection and -- and on this claim. But
8 the claim -- the claim was filed by as I understand it, by
9 Steven Wolak as personal representative of the estate of
10 Christopher Wolak, deceased.

11 And that's who the settlement was with that underlies
12 this dispute. And Steven Wolak is one of the debtors in a
13 Chapter 7 case in his individual capacity, but not in his
14 capacity as representative of the estate of Christopher Wolak.
15 Isn't that right?

16 MR. SWANSON: That's right. The settlement order
17 though that was entered in the Circuit Court provided that the
18 proceeds from the settlement would be -- at least a majority
19 of them would be provided to Mr. Wolak and his wife who are
20 both debtors in -- in the same Chapter 7 bankruptcy case.

21 THE COURT: I -- I think I saw what you're referring
22 to there. And that -- that certainly does indicate that
23 Steven Wolak and his wife, Francine Wolak who are the debtors
24 in the Chapter 7 bankruptcy case here certainly have a

1 so does their Chapter 7 bankruptcy trustee, right?

2 MR. SWANSON: Correct.

3 THE COURT: I did look in the -- take a look in the
4 -- a little bit at the bankruptcy case of the Wolaks by the
5 way. For the record it's case 15-53842, a Chapter 7 case
6 currently pending in this Court before Judge Shefferly.

7 And I -- I noticed that the Wolaks each claim a partial
8 exemption in -- it looks like in the -- the proceeds of this
9 claim, at least a partial exemption. So it looks like perhaps
10 we got both the Chapter 7 trustee and the Wolaks individually
11 all having a financial interest in the outcome of this
12 dispute. Do you agree?

13 MR. SWANSON: To the extent that that exemption is
14 valid, I would agree.

15 THE COURT: Well, it's been -- it's not been
16 objected to timely, so it's deemed allowed as an exemption, I
17 believe. And -- and certainly Mr. Kilpatrick can speak to
18 that in more detail.

19 But I -- I guess I come into this under the impression
20 that Steven Wolak both individually and in his capacity as --
21 as personal representative of the estate of Christopher Wolak,
22 deceased, has a financial interest in the outcome of this
23 dispute and of your claim objection. And as does Francine
24 Wolak. And as does the Chapter 7 trustee in the Wolaks'

1 interest.

2 And the response that was filed, the only response that
3 was filed in the claim objection was by Steven Wolak as
4 personal representative. And so he certainly had authority to
5 do that in that capacity, didn't he?

6 Now we've got another issue about -- and Mr. Kilpatrick
7 can tell me if he wants an opportunity to respond to your
8 objection too in writing. Because it looks like you didn't
9 serve him with the claim objection formally even though he's
10 obviously aware of it and he's here.

11 But the response that was filed, why -- if you think that
12 was filed without proper authority, as a response of Steven
13 Wolak as personal representative of the estate of Christopher
14 Wolak, why is that?

15 MR. SWANSON: I guess to begin with we weren't aware
16 that Mr. Wolak was in bankruptcy or we would have served Mr.
17 Kilpatrick. And --

18 THE COURT: Yeah. I think the trustee filed a --
19 her notice after you had already filed your claim objection.

20 MR. SWANSON: Yes, that's correct.

21 THE COURT: Yeah.

22 MR. SWANSON: To the extent that the Chapter 7
23 estate, and I'd -- I'd let them speak to this more than me,
24 can be separated from Mr. Wolak in his capacity as personal
25 representative of his son. And I think the Court is correct

1 that there are two different interests here.

2 THE COURT: Well, I think in your reply brief you
3 had asked me to strike the response of Steven Wolak, personal
4 representative. Are you still asking for that or not?

5 MR. SWANSON: No, we'll waive that.

6 THE COURT: All right. So you want to talk about
7 the merits then?

8 MR. SWANSON: Sure.

9 THE COURT: All right.

10 MR. SWANSON: Your Honor, there's no legally
11 cognizable argument that Mr. Wolak as personal representative
12 of the estate presents to have his claim allowed in the amount
13 that he filed that claim.

14 Your Honor, the city requested that the claim be allowed
15 in the amount of \$355,000 as a general unsecured claim and
16 \$20,000 pursuant to the treatment in Article 4S of the plan
17 which provides that in accidents such as these, the accident
18 victim can have \$20,000 in cash and then the balance of that
19 claim is distributed pursuant to Class 14 or Class 15 as
20 applicable.

21 Wolak makes two arguments, none of which contest the
22 city's objection which that this claim should be allowed in
23 the amount of 375,000, taking the 355,000 general unsecured
24 claim and the \$20,000 cash claim. He makes no arguments in
25 support of the original claim amount which was \$3,000,000.

1 What Mr. Wolak does is first he makes the same argument
2 that he did in front of this Court many many months ago. And
3 that he should be paid the entire amount of the settlement.
4 We had a hearing on that. Mr. Wolak filed his motion, we
5 filed an objection. The Court held that it did not have any
6 authority to order that Mr. Wolak's claim would be elevated
7 above all other general unsecured claims because this Court,
8 the city, and Mr. Wolak are all bound by the city's confirmed
9 plan of adjustment. Nothing has changed since that point.

10 THE COURT: By the way, I did go back and review the
11 transcript of the bench ruling that I gave in ruling on that
12 earlier motion by Mr. Wolak. That just for the record, the
13 transcript of that hearing which was held on July 15, 2015 is
14 on file in this case at docket 10070. We dealt with several
15 things that day, this was one of them, this -- this motion.

16 And I -- my -- my ruling on the motion begins at Page 54
17 of the transcript and carries over at Page 60. And then of
18 course I entered an order the same day at docket 10052, July
19 15th, 2015 denying the earlier motion by Mr. Wolak. Which as
20 -- as -- as you know and I'm sure you're coming to this, that
21 the order said it's without prejudice to the city's right to
22 file a timely objection to the \$3,000,000 claim filed in this
23 bankruptcy case by Steven Wolak, personal representative and
24 this order is without prejudice to the right of Steven Wolak,
25 personal representative to defend against any such claim

1 objection.

2 And I think in the bench opinion -- my bench opinion
3 ruling, I basically said we -- we leave to another -- I leave
4 to another day this question of whether among other things,
5 whether this alternative relief that Mr. Wolak has mentioned
6 and argued about in his response to your current claim
7 objection, is at all permissible the -- the alternative relief
8 of basically having the settlement undone or voided on grounds
9 that -- I don't know, various grounds, equity, fraud, whatever
10 it may be.

11 This notion that it's -- that the city agreed to a
12 settlement and Wolak agreed to a settlement right before the
13 filing of the bankruptcy case on the assumption that the
14 settlement amount, 375,000 would be paid in full cash dollars
15 at 100% by the city. And that when the city filed its
16 bankruptcy case that sort of blew that apart, that's the idea.

17 So I'm putting it pretty roughly, but that's the idea of
18 course and -- the argument. And I -- as I -- as I understood
19 my -- and recollected once I read the transcript, I -- I put
20 off any ruling on the merits of that kind of argument, didn't
21 I?

22 MR. SWANSON: I -- I agree that you did with respect
23 to --

24 THE COURT: Okay.

25 MR. SWANSON: And just reinstating the -- the case.
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1 I -- I don't think the Court put off any further argument on
2 whether the claim should be paid in full. I think that was
3 decided then and that -- that argument --

4 THE COURT: I think I -- I think it's certainly fair
5 to say and I -- this is my reading of it, that I did rule that
6 at that time that if -- you know, as long as the settlement
7 agreement is in place and there's a \$375,000 allowed claim, as
8 long as that's the amount of the allowed claim then -- then
9 there's no basis for Mr. Wolak to be paid 100% of that claim
10 under the confirmed plan of adjustment. And that seems to me
11 that's absolutely clear.

12 But anyway -- and of course all this stuff on the earlier
13 motion happened before the Wolaks filed their bankruptcy case.

14 MR. SWANSON: That's correct, yeah.

15 THE COURT: Okay. So go ahead.

16 MR. SWANSON: Certainly, Your Honor. So one, the
17 city does not believe that there's any basis or -- to -- to
18 pay this claim in full and nothing's changed since the earlier
19 argument. Of course the plan hasn't been amended. The plan
20 still stands. It was confirmed as binding on Mr. Wolak.

21 Second, Your Honor, Mr. Wolak does argue that the State
22 Court case should be reinstated. But I submit that Mr. Wolak
23 has offered absolutely no proof in support of his allegations
24 of fraud or bad faith.

1 Mr. Wolak raises is that the city entered into this settlement
2 agreement by way of fraud knowing that it was going to file
3 bankruptcy. And I believe Your Honor at the last hearing
4 asked Mr. Wolak well, wasn't that, you know, fairly well known
5 at the time that the city was considering bankruptcy.

6 And I think Mr. Wolak's counsel candidly acknowledged
7 that -- that it was. I don't think in a response to a claim
8 objection a party can assert bad faith or fraud.

9 THE COURT: I didn't -- you know, I didn't read the
10 transcript of the whole hearing, I just read my bench ruling.

11 MR. SWANSON: Sure.

12 THE COURT: You're saying that's in there?

13 MR. SWANSON: I'm pretty sure it's in there. The --
14 the Court --

15 THE COURT: Do you have the page number in the
16 transcript? I'd like to see that.

17 MR. SWANSON: Sure.

18 THE COURT: And again I'm sorry, I didn't read the
19 whole thing. The hearing lasted I think a little while that
20 day.

21 MR. SWANSON: It's going to take me a minute but
22 I'll find it.

23 THE COURT: Go ahead.

24 MR. SWANSON: Yeah.

25 THE COURT: The transcript is docket 10070.

1 MR. SWANSON: Yeah. Page 44, Mr. Dworetsky, I
2 believe it's pronounced. He says it did. And all that
3 happened while -- while this bankruptcy is looming. They're
4 on the brink of bankruptcy. They know this thing is coming if
5 they negotiated with my client to compromise the claim.

6 Well -- the Court says well, they're not -- the city
7 isn't the only entity that knew it was coming were they? You
8 had no inkling? Mr. Dworetsky, understood. However the city
9 was the one that was making the payment.

10 So I --

11 THE COURT: This is at Page 44?

12 MR. SWANSON: Forty-four. Towards the top of the
13 page.

14 THE COURT: All right. Hold on. All right. I have
15 seen that excerpt. Go ahead.

16 MR. SWANSON: Your Honor --

17 THE COURT: I guess you're arguing from that there
18 can't be any fraud because there could not have been any
19 reasonable reliance by Wolak and his attorneys on the city not
20 filing bankruptcy.

21 MR. SWANSON: Exactly, Your Honor. The response
22 throws around words like fraud and bad faith. But they offer
23 absolutely no proof that there was any fraud or bad faith.

24 And -- and without any proof or any sort of affidavit
25 submitted in response, the city asks that its objection be

1 sustained. There's no reason this State Court case should be
2 reinstated.

3 There was a settlement agreement. And that is the value
4 of the claim at this point. And the city will honor the plan
5 and pay the claim and \$20,000 cash and the \$355,000 general
6 unsecured claim.

7 THE COURT: You agree, I -- I assume that under
8 Michigan law fraudulent inducement to a settlement agreement
9 is a grounds by which a party who was fraudulently induced to
10 enter a settlement agreement can essentially rescind it or
11 void it.

12 MR. SWANSON: That sounds right to me, Your Honor.
13 I don't know the -- the case law, but that sounds very fair,
14 yeah.

15 THE COURT: But -- and part of what you're saying is
16 there's just no evidence of that here.

17 MR. SWANSON: No. I mean repeatedly what we've
18 heard from Mr. Wolak is -- is throwing around these
19 allegations with absolutely no proof. And that's what we got
20 in this response as well. And he's had many opportunities to
21 make his case and he hasn't.

22 THE COURT: Anything else you want to say then?

23 MR. SWANSON: No, Your Honor. Thank you.

24 THE COURT: All right. Mr. Kilpatrick, I think I

1 wait until after Ms. Arndt.

2 MR. KILPATRICK: I'm -- I'm going to be real brief,
3 Your Honor.

4 THE COURT: All right. Go ahead.

5 MR. KILPATRICK: Your Honor, the -- the -- Steven
6 and Francine Wolak filed a Chapter 7 bankruptcy case September
7 21, 2015. Ms. Evangelista was appointed the interim trustee
8 and became the permanent trustee on October 28th, 2015 at the
9 conclusion of the 341 examination.

10 As this Court has noted it was case number 15 -- it is
11 case number 15-53842 assigned to Judge Shefferly. You did
12 note that there is an exemption claimed by both Francine and
13 Steven Wolak.

14 Mr. -- Mr. and Mrs. Wolak claim a total of approximately
15 \$11,000. As is obvious the amount that's in prospect exceeds
16 the amount of the claimed exemption and it has not been
17 amended to date. So their interest is limited to that amount.

18 We have reviewed with Mr. Swanson once he became aware of
19 the trustee's interest which was in -- the trustee's claim of
20 interest was filed to put this Court on notice and also the
21 City of Detroit on notice as to the filing of the Chapter 7
22 case to preserve the right for the trustee to capture whatever
23 is due to this -- to the -- to the Wolak estate for
24 distribution to those creditors.

1 he was kind enough to provide us with the documents, all of
2 the underlying documents that were filed in this case and
3 after a thorough review by both myself and my client who is an
4 attorney, we found no basis to really object to the treatment,
5 to the -- to the relief sought by the trustee -- by the -- by
6 Mr. Swanson and the City of Detroit.

7 As you're aware, I -- I have a relatively unique position
8 having represented the Water and Sewerage Department in -- in
9 other matters before this Court. And the history there and --

10 THE COURT: In this case.

11 MR. KILPATRICK: In this case.

12 THE COURT: Yeah.

13 MR. KILPATRICK: And -- and leading up to -- leading
14 up to the actual filing of the case. I hear the arguments
15 that are being made by our counsel by the way and which we're
16 employing a special counsel. But at the same time having been
17 retained by the Water and Sewerage Department, some 18 months
18 prior to the actual filing of the case, it's hard to think
19 that anybody who lived in southeastern Michigan wasn't aware
20 of the financial difficulties that the city was confronting
21 starting in 2012 once we no longer had access to the capital
22 markets to finance its current obligations.

23 And in the prospect of the filing of a chapter -- some
24 type of Chapter 9 case or some type -- some type of

1 year. Again --

2 THE COURT: Wait. Just a question. You -- it
3 sounds like you just said that Ms. Evangelista, the trustee in
4 your case, your bankruptcy case is employing Ms. Arndt's firm
5 as special counsel for the trustee?

6 MR. KILPATRICK: Yes, we are.

7 THE COURT: You are. Okay, I hadn't seen that. Is
8 that --

9 MR. KILPATRICK: Well, we're -- we're in the process
10 of doing that now. I -- in fact I met with one of my
11 associates, I assume it had been done well prior to now. But
12 -- but we are going to do that just to get this thing wrapped
13 up and concluded.

14 THE COURT: All right. I'm sorry to interrupt you
15 with that, but go ahead you were saying.

16 MR. KILPATRICK: But -- but with that, Your Honor, I
17 cannot get in front of -- appear in this Court and -- and
18 argue that -- I can't assert the basis that they have in their
19 response to the objection.

20 The trustee -- in essence, the trustee agrees with the
21 treatment afforded by the city in its objection to the
22 allowance of the claim filed by Fieger -- by the Fieger office
23 on behalf of the Wolaks.

24 THE COURT: All right. Thank you. Ms. Arndt.

25 MS. ARNDT: Thank you very much, Your Honor. First
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1 of all, you kind of hit the nail on the head right out of the
2 gate. The estate is a separate and distinct entity from the
3 parent.

4 Yes, Mr. Steven Wolak was appointed as personal
5 representative but that is the limit and scope of his
6 authority. And before he filed bankruptcy we could have had a
7 public administrator.

8 The estate is a separate entity. The estate is the party
9 that is before this Court right now. When the Court was --

10 THE COURT: It is -- you're referring to the
11 decedent estate.

12 MS. ARNDT: The decedent estate.

13 THE COURT: Rather than the bankruptcy estate or the
14 Wolaks' bankruptcy case.

15 MS. ARNDT: I'm sorry, Your Honor.

16 THE COURT: To keep it straight, call one the
17 decedent's estate and the other the bankruptcy estate. Can we
18 do that?

19 MS. ARNDT: Absolutely.

20 THE COURT: All right. Go ahead.

21 MS. ARNDT: Great idea.

22 THE COURT: Go ahead.

23 MS. ARNDT: So I'm here today on behalf of the
24 decedent's estate of Christopher Wolak. When the Court was

1 fraudulent inducement, he said well, there's nothing here
2 showing any reasonable reliance by the plaintiff.

3 Are you kidding me? We went to Court. We got a Court
4 order. There were representations by the City of Detroit at
5 that hearing. This is a settlement. This is what we're going
6 to pay. Testimony was taken. Judge Stempien entered an
7 order. Of course there was reasonable reliance as to that
8 issue.

9 THE COURT: Excuse me. You're talking about the
10 hearing that led to entry of the order approving the
11 settlement that was filed in the Wayne County Circuit Court on
12 May 13, 2013?

13 MS. ARNDT: Absolutely, Your Honor.

14 THE COURT: Which is an attachment to your client's
15 response, docket 11662, right?

16 MS. ARNDT: Yes, Your Honor. I believe it was the
17 first exhibit.

18 THE COURT: Was the hearing on May 13 or close to
19 that date?

20 MS. ARNDT: Generally the hearings are very close to
21 that date because they usually -- I mean it wasn't -- it's a
22 filing now, but usually we would with the order.

23 THE COURT: So it's about two months before the city
24 filed their bankruptcy case?

1 there. And we're putting this on the record in front of the
2 Court. So absolutely there was reasonable reliance.

3 The other issue we have --

4 THE COURT: Well, wait a minute, wait a minute. The
5 transcript of what was said in that hearing is not currently
6 in the record in this case, is that right? I didn't see it
7 anywhere.

8 MS. ARNDT: I am not aware that it is. I do not
9 believe that it's been reduced to writing, no.

10 THE COURT: And why do you say there was reasonable
11 reliance, essentially reasonable reliance. And I think your
12 theory if I understand it for voiding the settlement as your
13 alternative relief is that your side was fraudulently induced
14 by city -- the city to enter this settlement based on the
15 city's either implied representation, or failure to disclose
16 that the city was soon going to file bankruptcy.

17 MS. ARNDT: That is --

18 THE COURT: The implied representation, the city was
19 not soon going to file bankruptcy or that the city would pay
20 this full amount before filing bankruptcy or even after filing
21 bankruptcy, this full \$375,000 amount, or their failure when
22 they had a duty to disclose that they were about to file
23 bankruptcy and they didn't do it, is it. And that the -- your
24 side reasonably relied on that and that that was done with
25 fraudulent intent by the city.

1 That's -- that's the -- isn't that essentially what you
2 would have to prove at least in part in order to avoid this
3 settlement based on fraudulent inducement?

4 MS. ARNDT: Yes. But that is not our only argument
5 on avoidance.

6 THE COURT: Okay.

7 MS. ARNDT: The other argument is the fact that we
8 have -- that the lawsuit that was commenced in Wayne County is
9 a multi-defendant lawsuit. There were direct claims of
10 negligence against both the City of Detroit and Audrian -- or
11 Audrian -- Audrian Hardy.

12 There was a global settlement that was reduced to a
13 global release. There is no indication in the release as to
14 whose apportionment was to what between the city and Ms.
15 Hardy.

16 Obviously if the Court so rules, the city is bound by its
17 portion of the bankruptcy. But Ms. Hardy is not a party to
18 this bankruptcy.

19 THE COURT: Well, wait a minute, wait a minute. Are
20 you saying here -- it sounds like what you're saying here is
21 that the settlement documents are not clear as to who as
22 between the two defendants was to pay how much of the total
23 settlement?

24 MS. ARNDT: That is correct, Your Honor.

25 THE COURT: Or whether -- or whether both

1 defendants, City of Detroit and Audrian Hardy --

2 MS. ARNDT: Yeah.

3 THE COURT: Are -- are not -- are jointly and
4 severally liable for the full amount. So that whatever the
5 city doesn't pay as a result of their bankruptcy or otherwise
6 you want to be allowed to go after Audrian Hardy for the rest.
7 Is that the idea?

8 MS. ARNDT: That is the general idea. But I will
9 make one point though. Because this is something that keeps
10 coming up as I'm trying to explain this concept to people.

11 As someone who does a lot of personal injury work, Your
12 Honor, what's going to happen is I mean they will send me this
13 answer. Well, just go file as to Ms. Hardy I mean if that's
14 your theory.

15 Well, that's fine except the release says the City of
16 Detroit and all of its employees. So we have an ambiguity in
17 the contract of the release agreement. It was drafted by the
18 city so we construe that against the drafter. And --

19 THE COURT: What's ambiguous in the release?

20 MS. ARNDT: It doesn't indicate who is paying what.
21 So the Court can't --

22 THE COURT: Well, wait a minute, wait a minute. The
23 release -- you're right. But the release is not ambiguous in
24 -- in the fact that it releases not only the City of Detroit,
25 but Audrian Hardy, right?

1 MS. ARNDT: That is how it's worded yes, Your Honor.

2 THE COURT: I -- I think I -- the point about it
3 doesn't clearly say who is to pay what as between the two
4 defendants. It just says second line, in consideration of the
5 sum of \$375,000 and an entry of an order, et cetera. There's
6 the release. Is that what you mean?

7 MS. ARNDT: Yes, Your Honor. And obvious --

8 THE COURT: So -- so what you're saying is what?
9 That -- that Audrian Hardy is released except she's not
10 released from making the payment required by the settlement
11 agreement to the extent the city doesn't pay it, is that the
12 idea?

13 MS. ARNDT: She is potentially released by the
14 settlement agreement. As to which portion of her
15 responsibility for the three seventy-five is hers versus the
16 city's and therefore the city's portion may be applicable to
17 the city or her portion may be applicable to her, that -- that
18 release agreement that the city drafted does not indicate
19 that. And for us to try to --

20 THE COURT: Well, what does that problem have to do
21 with what the city's responsibility is in the bankruptcy case
22 in -- in -- in terms of paying under this settlement? In
23 other words how does that affect what the city is required to
24 pay under its confirmed plan of adjustment based on this

25 pre-petition settlement agreement?

1 MS. ARNDT: Well, it would affect the amount.

2 THE COURT: Why would it affect the amount? The
3 city -- let's assume for a minute -- let's assume for a minute
4 the city based on a favorable ruling here, let's assume the
5 city is ordered to -- that the city's objection to claim is
6 sustained here so that what the city ends up paying your
7 client is 20,000 in cash plus whatever distribution comes as a
8 result of your client having a Class 14 allowed claim in the
9 amount of \$355,000. Certainly it's going to be less than
10 355,000 ultimately.

11 So less than the full three seventy-five gets paid by the
12 City of Detroit. Isn't that the only thing the Court in this
13 bankruptcy case has any business deciding? That is what
14 Detroit's responsibility is and -- and isn't it up to the --
15 to the State Court to rule and decide what responsibility if
16 any or liability if any Audrian Hardy has individually under
17 the settlement agreement.

18 MS. ARNDT: But the State Court can't do that, Your
19 Honor, unless you send us back to the State Court to be
20 considered there. Because otherwise the State Court is going
21 to say this is a City of Detroit Bankruptcy Court matter and I
22 will defer to that.

23 If Your -- if Your Honor says send it back to the State
24 Court, what happens is, we set this for trial. We have a

25 trial. Michigan is a several liabilities state and we have an
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1 allocation of fault. And that's how we decide.

2 THE COURT: Well --

3 MS. ARNDT: Or -- or we try to reach a separate
4 settlement with Ms. Hardy. But if Your Honor --

5 THE COURT: Well, an alternative to that is Ms.
6 Hardy could say, we're all bound by this -- still bound by the
7 \$375,000 settlement. So the most I could possibly owe is
8 whatever the city doesn't pay of the three seventy-five and
9 that's it.

10 We're not going to have a trial, it's settled. And
11 that's a -- that's an alternative position that could possibly
12 be adopted. But it -- I guess my -- my point is, -- the point
13 of my question is, the issue of what responsibility or
14 liability Ms. Hardy may have individually is not an issue for
15 this Court in this bankruptcy case, I don't think.

16 It's an issue if to be decided anywhere by the State
17 Court. And if what you're saying is that in any order I
18 enter, I should say something to make clear to the State Court
19 that that's the case, fine, you know, tell me what you want
20 and I'll consider it.

21 But, you know, I don't think I -- I need to or ought to
22 as the Bankruptcy Court in the City of Detroit case make a
23 decision about what Audrian Hardy owes individually under the
24 settlement agreement. I mean unless I'm missing something.

25 Why -- why should I be involved in -- in doing that rather
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1 than the State Court?

2 MS. ARNDT: Well, but I think Your Honor if you
3 sustain their objection it -- from what I understand the
4 20,000 goes through, the annuity goes through, and we operate
5 like Ms. Hardy doesn't have an issue here. But Ms. Hardy does
6 have an issue here.

7 THE COURT: By annuity you mean -- you mean the --
8 the distribution on the Class 14 claim?

9 MS. ARNDT: Yes.

10 THE COURT: On the -- the bond, the thing. Some day
11 that's the amount that -- that -- that is realized on that
12 Class 14 claim, the actual dollar amount or value will be --
13 will be known. But it's not known at the moment.

14 But there's going to be some sort of deficiency, assuming
15 you know, that that's the outcome for -- in the city's case
16 with respect to this claim. And so I think the question
17 you're raising is well, then what is Audrian -- Audrian
18 Hardy's liability if any under the settlement agreement or
19 otherwise in light of the fact if it becomes the fact that the
20 full three seventy-five is not paid 100 cents on the dollar by
21 the city.

22 And my reaction to that is why isn't that for the State
23 Court to decide. And -- and if necessary perhaps, you know,
24 with some guidance from this Court in the form of an order

1 claimant here Mr. Wolak may have against Audrian Hardy
2 individually under the settlement agreement or otherwise. And
3 then off you go to the State Court about that.

4 MS. ARNDT: Well, Your Honor --

5 THE COURT: Is -- is that the appropriate way for
6 this Court to deal with the Audrian Hardy issues that you're
7 raising?

8 MS. ARNDT: I think that we are headed in the right
9 direction. The one obstacle that is created by the City of
10 Detroit's relief that they drafted is that the phraseology of
11 the City of Detroit and all employees.

12 Because what's going to happen until you get -- they
13 drafted this release, it got signed everyone thinking the
14 three seventy-five is going to be paid. We got orders entered
15 to that effect.

16 And now what will happen is if Your Honor crafts that
17 language informing the Court that it -- the State Court that
18 it can consider this Audrian Hardy claim, they're just going
19 to argue res judicata. Because they're going to say that it's
20 in the release -- or and the release applies.

21 And so it's like we end up nowhere again. And this --
22 this agreement does not say what percentage of what.

23 THE COURT: Well, I come back to my question. What
24 is that -- how is that relevant to the matter before me in

1 the city is right or wrong about what the Court should do with
2 your proof of claim for \$3,000,000 against the city filed in
3 this case. Do you see -- do you see why I'm coming back to
4 that --

5 MS. ARNDT: I understand -- I understand where
6 you're going, yes.

7 THE COURT: I sound like a broken record probably.
8 But --

9 MS. ARNDT: I probably do too.

10 THE COURT: Yeah, maybe. Yeah, we're --

11 MS. ARNDT: Maybe we're getting to that point. I --
12 I think that whatever the Court decides I think that we need
13 to -- to be cognizant of the potential state law claims. And
14 I agree with you that phraseology needs to go in there
15 somewhat advising the State Court that -- that this -- this
16 issue was not decided by you.

17 THE COURT: Okay. So let's move on. What else do
18 you want to say about this -- your response to the city's
19 claim objection.

20 MS. ARNDT: That would be all, Your Honor. I -- for
21 the remainder of it I would rest on my brief. And I'm here to
22 answer any questions that the Court has.

23 THE COURT: So how is there fraudulent inducement to
24 -- to -- by the city to enter -- to induce your client to

1 thereabouts?

2 MS. ARNDT: Right. Your Honor --

3 THE COURT: Do you want to say -- you want to
4 elaborate on that at all a little more?

5 MS. ARNDT: I want to elaborate it to the extent
6 that --

7 THE COURT: The city has said you got no details,
8 you got no facts, you got no evidence on that. And he cited
9 of course he cited at Page 44 what Mr. Dworetsky said or
10 Dworetsky said at the hearing on July 2015 on that.

11 MS. ARNDT: Well, I don't -- from what was quoted,
12 what was brought out last in the record I don't think that was
13 binding and is any concession by Mr. Dworetsky that he knew
14 that the City of Detroit bankruptcy was coming on that day.

15 I think the only people who knew that were the law
16 department and the people that they retained to help them put
17 that petition together.

18 THE COURT: Well --

19 MS. ARNDT: That being said, the law department is
20 also the one that negotiated the settlement. And so they knew
21 that this was coming.

22 THE COURT: Well, so far, okay, as I understand the
23 record in this bankruptcy case, there is no evidence yet at
24 least in the record to substantiate a claim of fraudulent

25 inducement by the city of -- of your client to enter into this
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1 settlement agreement.

2 You're arguing reasons why you think there -- it sounds
3 like whether you think there is or may be such a claim, but
4 there's no evidence.

5 MS. ARNDT: Well, Your Honor --

6 THE COURT: For example -- for example, there's no
7 evidence yet in the record at least of -- of what your client
8 and your client's attorneys, your firm whoever, you know, was
9 involved at the time, knew or didn't know, or thought or
10 didn't think about the city filing bankruptcy soon and what
11 affect that might have if any on this settlement. There's
12 just nothing in the record yet in the way of evidence of the
13 specific facts about that, do you agree?

14 MS. ARNDT: I do agree.

15 THE COURT: Other -- with the possible exception of
16 what Mr. Dworetzky said in the July hearing which you have
17 argued doesn't really amount to any concession. Am I right
18 about that?

19 MS. ARNDT: I do, but I also would indicate to the
20 Court that I think that that's the most appropriate thing for
21 an evidentiary hearing. I know that the attorney who
22 negotiated that settlement on behalf of our firm and Mr.
23 Wolak's estate -- the decedent's estate is no longer with the
24 firm so we'll obviously have to bring him in. And the big

25 place --

1 THE COURT: Who is that?

2 MS. ARNDT: I believe it was Mr. Michael Ratton at
3 the time.

4 THE COURT: Michael what?

5 MS. ARNDT: Ratton, I believe. Don't --

6 THE COURT: Do you want to spell that for me?

7 MS. ARNDT: Mr. Ratton's last name is R-a-t-t-o-n.

8 THE COURT: He's no longer with your firm.

9 MS. ARNDT: No, he started his own firm.

10 THE COURT: Still around though.

11 MS. ARNDT: Oh, he's in the area. His office is in
12 Southfield. And I --

13 THE COURT: Well, okay. So are you -- are you
14 saying that you want the Court to give you an opportunity to
15 file -- or supplement your response to the claim objection
16 with affidavits, documentation of factual evidentiary support
17 for a fraudulent inducement argument?

18 MS. ARNDT: I -- if that is how the Court would like
19 to begin developing the record, absolutely I would like that
20 opportunity.

21 THE COURT: Well, I generally don't set evidentiary
22 hearings unless I am persuaded that we actually need them.

23 MS. ARNDT: Okay.

24 THE COURT: Need it. And -- and that means that

25 there's a genuine dispute, factual dispute about some fact
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1 that matters to a -- to a motion or -- or an issue. And so I
2 do think it's appropriate that we begin if we're going to do
3 anything more at all that we begin with filing of affidavits,
4 a transcript of this hearing in State Court if you want to
5 submit that, whatever evidence you want to submit.

6 MS. ARNDT: Uh-huh.

7 THE COURT: Document or including affidavits. And
8 then of course you have -- the city would have an opportunity
9 to respond to that. And then if -- if I decide at a further
10 hearing that we do need an evidentiary hearing, then I'd set
11 one and we'd have it.

12 But are you saying you want that opportunity to submit
13 such documentary evidence, affidavit and the like, even though
14 you didn't put it in your response that you filed so far.

15 MS. ARNDT: Yes, if the Court would so graciously
16 give me the opportunity I would.

17 THE COURT: And this is for a theory -- an effort to
18 avoid the settlement agreement as having been fraudulently
19 induced.

20 MS. ARNDT: Yes, I understand.

21 THE COURT: Is that right?

22 MS. ARNDT: Yes.

23 THE COURT: I mean are there other arguments you
24 want to -- to make for avoiding the settlement agreement as

1 bankruptcy case? In other words you -- you got two paths to
2 go down.

3 MS. ARNDT: Right.

4 THE COURT: One is you -- you -- you stick with the
5 settlement agreement and -- and -- and you don't try to avoid
6 it and undo it, rescind it. And -- and you argue about what
7 it means and what it requires and those sorts of things.

8 And the other path is, you avoid -- try to avoid the
9 settlement agreement, say it should be rescinded and ignored,
10 cancelled for fraudulent inducement or because some other
11 valid legal basis for rescinding or avoiding a contract.

12 One -- one seeks to enforce the -- the settlement
13 agreement, the other seeks to avoid it, the opposite.

14 MS. ARNDT: Oh, I --

15 THE COURT: Do you see what I'm saying? So --

16 MS. ARNDT: Absolutely.

17 THE COURT: I want to know what if -- if you want an
18 opportunity to do -- file further briefing and further
19 evidence, I want to know what it -- what about is what I'm
20 asking you.

21 MS. ARNDT: I think, Your Honor, we would go more in
22 the general area of the avoiding of the agreement to -- to
23 issues such as fraudulent inducement. That being said, Your
24 Honor, because I have not had an opportunity to speak to the

1 the time, nor the facilitator who I believe was involved, I
2 would not -- I would like to kind of leave the path open but
3 maybe not in excess to a fraudulent inducement theory.

4 That allow -- I mean obviously whatever the Court would
5 allow ample time for them to respond and then the Court to
6 make its decision based on everything submitted.

7 THE COURT: Well, for the benefit of both sides, let
8 me say this. I -- I have in the past had occasion to rule on
9 motions that seek to enforce a settlement agreement. Not just
10 the City of Detroit case, but in other cases.

11 MS. ARNDT: Uh-huh.

12 THE COURT: And I have in at least one other case,
13 I'm sure more, but at least one other case as -- kind of a
14 lengthy bench opinion I've given and there's a transcript of
15 -- of what I said. When I -- where I talk about general
16 principles applicable to settlement agreements and enforcing
17 them and interpreting them under Michigan law as well as
18 possible grounds of Michigan law recognizes for avoiding
19 enforcement of a settlement agreement, undoing it essentially.

20 Essentially those are duress, fraud, mutual mistake,
21 severe stress, or unconscionable advantage taken by one party
22 over the opposing party. And there's case law that -- that
23 talks about what those things mean and what you have to show
24 to -- to establish any of those things.

1 record I'll -- I'll say that I think what I'll do is I will
2 file a -- a copy of my -- the transcript of my bench opinion
3 on this subject from another case, from a different case, and
4 not the City of Detroit case. In this case so the parties
5 will be able to see it and read it and see what I said in
6 there.

7 But the case that -- that among other cases that stand
8 for that proposition, that -- that exceptions to enforcing a
9 settlement agreement essentially or defenses, is the case of
10 Dezaak, D-e-z-a-a-k, Management, Inc. v Auto Owners Insurance
11 Company reported at 2012 Westlaw 5258304, a decision of the
12 Michigan Court of Appeals from October 23, 2012. And there's
13 other cases, but that's one of them.

14 And it says, "in the absence of duress, fraud, mutual
15 mistake, severe stress, or unconscionable advantage taken by
16 one party over the opposing party, Courts are bound to
17 enforcement settlement agreements."

18 So you got -- there's this fraud type basis, you know,
19 just like any contract. If you want to try to avoid a -- a
20 contract on grounds of fraudulent inducement, you know,
21 there's certain things you have to prove and Michigan case law
22 exists on this subject.

23 But those are the grounds. And it sounds like the only
24 one that you're really talking about that's at all even

1 ground, legal ground for avoiding this settlement agreement
2 that you are arguing, or is it -- or is that it?

3 And I know you said bad faith. But bad faith is not a
4 basis under Michigan law for avoiding a settlement agreement,
5 enforcement of the settlement agreement. Bad faith has to
6 rise to a level of unconscionability, duress, severe stress.
7 The more extreme thing.

8 So perhaps the -- the thing to do is for me to just leave
9 it at -- at what I've said about the grounds in the Dezaak
10 case that I think that they're alluding to there. And again
11 I'll file a -- a transcript. It's from a bench opinion I gave
12 in an adversary proceeding, adversary proceeding 14-4318.
13 It's at docket 133 in that adversary proceeding. Case of
14 Collins v Deshikachar.

15 And this was given April 29, 2015, a bench opinion. So I
16 will -- I will file a copy of that transcript so that everyone
17 can read it and see what it says for whatever it's worth. And
18 I'm just going to file the portion of the hearing from that
19 day that has my ruling in it, so it's going to be excerpts.

20 MS. ARNDT: Okay, very good.

21 THE COURT: So but anyway back to -- to you. Did
22 you want to say anything else about this now?

23 MS. ARNDT: No, not other than to get a -- a time
24 parameter from the Court.

1 come back to that in a minute. Mr. Swanson, did you want to
2 reply briefly in support of the objection to claim?

3 MR. SWANSON: Well, it seems like the Court's
4 inclined to -- to grant Mr. Wolak additional time to
5 supplement his response so the city would -- would just ask
6 that it be entitled to respond to -- to anything Mr. Wolak
7 files.

8 I think it's a tough case to make fraud here. Kevin Orr
9 was appointed in March of 2013 several months prior to this
10 settlement agreement being executed. You know, the whole --

11 THE COURT: I understand and I -- you know, I -- I
12 am giving the other side an opportunity to -- to -- to file
13 further things. I -- I don't mean to imply or suggest to
14 either side a -- a leaning one way or the other on this. So
15 I'm not -- I really don't intend to express any view about the
16 ultimate outcome on this kind of argument.

17 MR. SWANSON: Certainly.

18 THE COURT: But I -- I do think it's appropriate to
19 give the other side a -- a -- a further opportunity and of
20 course the city and the Chapter 7 trustee, the Wolak case an
21 opportunity to respond to that. And then we'll have a further
22 hearing.

23 MR. SWANSON: Sure. And -- and final point is with
24 respect to Ms. Hardy. We can turn back to Page 44 of -- of

25 the transcript and -- and Mr. Dworetzky said again.

1 understood, however, the city was the one that was making the
2 payment. Ms. Hardy was not obligated to make any payment.
3 The city vehemently disagrees with that -- that argument. It
4 was the city that was making the payment under the settlement
5 agreement.

6 THE COURT: Well, that certainly may have been
7 everyone's expectation. Because the city was the deep pocket
8 and -- and Ms. Hardy presumably was not.

9 But that doesn't necessarily mean she's not -- wouldn't
10 be on the hook for -- for the unpaid part of the settlement,
11 the city didn't pay it all, does it?

12 MR. SWANSON: I think if the city is the one who's
13 -- who was contractually obligated to -- to make the payment,
14 and -- and Ms. Hardy was not, then I -- I don't think Ms.
15 Hardy has -- has any -- any liability here.

16 THE COURT: Well, is there -- this -- I meant to ask
17 you to make sure I -- I knew the answer to this question
18 before and I didn't ask either side. But the only thing in
19 the record so far is this -- about this settlement that in
20 writing about the settlement in here is that the State Court
21 order approving the settlement.

22 MR. SWANSON: Sure.

23 THE COURT: And the release document. These are
24 attached as exhibits to Wolak's response. I think they were

1 Are these the only documents or writings that evidence the
2 settlement?

3 MR. SWANSON: I believe there's also a motion filed
4 too that led to the entry of that order.

5 THE COURT: But there's no separate document,
6 settlement agreement type document.

7 MR. SWANSON: If -- if -- I'm not aware of any, but
8 I will ask the question and if there is, we'll bring it to the
9 Court's attention.

10 THE COURT: Well, all right. Anything else, Mr.
11 Swanson?

12 MR. SWANSON: No. No, Your Honor.

13 THE COURT: All right. Well, I am going to order
14 further proceedings on this claim objection before making an
15 ultimate ruling on it to give -- to grant the request by Mr.
16 Wolak as personal representative of the estate of Christopher
17 Wolak, deceased, an opportunity to present evidence and
18 further argument as to why the alternative relief requested in
19 the response to the claim objection should not be granted.
20 That is that the settlement agreement, essentially the
21 settlement agreement at \$375,000 be avoided.

22 And in this case one of the arguments that I understand
23 Mr. Wolak wants to further support and argue is essentially
24 that he was fraudulently induced by the city to enter into the
25 settlement agreement and to the settlement.

1 And possibly other grounds for avoiding the settlement
2 agreement that apply and exist and permit parties to avoid
3 settlement agreements and avoid enforcement of settlement
4 agreements under Michigan law. And I will give that
5 opportunity for Mr. Wolak to pursue that in the way of a
6 further briefing and filing of evidence in the form of
7 affidavits and other documents in support of that -- those
8 type arguments.

9 The -- with respect to the -- the alternate path of --
10 that is the first choice of Mr. Wolak in his response to the
11 claim objection that the Court should require the city to pay
12 100% of the \$375,000 settlement amount here to Mr. Wolak.

13 There is I -- I -- I will, and this is consistent with
14 the ruling that I made back in July 2015 on Mr. Wolak's
15 earlier motion. There simply is no basis in my view for the
16 Court to grant that relief.

17 The -- the \$375,000 if the settlement agreement is not
18 avoided and -- and does remain effective and enforceable, that
19 agreement clearly means in my view that Mr. Wolak has -- is to
20 be allowed a claim in the total amount of \$375,000 in the
21 city's bankruptcy case. And if the claim is to be treated in
22 Class 5 the way the city has proposed it be treated and
23 satisfied -- and classified in the city's objection to claim
24 and in the proposed order filed by the city with the claim
25 objection.

1 That is that it be paid \$20,000 in cash and a -- the
2 balance, the \$355,000 balance be an allowed Class 14 other
3 unsecured claim. That's what will become of and happen to and
4 be done with the claim number 3232 for \$3,000,000 filed by Mr.
5 Wolak, unless Mr. Wolak is able to prevail in avoiding the
6 settlement agreement, the pre-petition settlement agreement at
7 issue here.

8 And so I -- I will give Mr. Wolak an opportunity to do
9 that if he wants to do that. And I want to set up a schedule
10 for further filings now on that subject.

11 The first filing will be by Mr. Wolak. Mr. Wolak may
12 file -- and I want to set a deadline, may file a supplemental
13 brief and exhibits containing any evidence such as affidavits
14 and other documents Mr. Wolak wishes the Court to consider in
15 support of any argument Mr. Wolak makes for avoiding the
16 settlement agreement.

17 Ms. Arndt, how much time do you want the Court to give
18 you to -- to file those things? I want to set a deadline for
19 that.

20 MS. ARNDT: Would 30 days be appropriate?

21 THE COURT: I'm sorry?

22 MS. ARNDT: Would 30 days be appropriate?

23 THE COURT: That's fine. Thirty days from today is
24 December 16, Friday, 2016. So that will be the deadline for

1 Evangelista in the bankruptcy case, do you want to file --
2 have an opportunity to file something, and this is optional of
3 course, but to file something after Ms. Wolak -- Mr. Wolak
4 files whatever he's going to file?

5 MR. KILPATRICK: Yes, Your Honor. And I would need
6 -- I would only need seven days.

7 THE COURT: So seven days after December 16, is that
8 what you're saying?

9 MR. KILPATRICK: That's correct, Your Honor.

10 THE COURT: All right. Well, that's December 23. I
11 believe our Court is closed that day, so if I said December 23
12 you would automatically get more time than that. So do you
13 want to -- we're looking at December 22, six days, or --

14 MR. KILPATRICK: Let's go -- I want --

15 THE COURT: December 27th.

16 MR. KILPATRICK: The 27th is -- thank you.

17 THE COURT: All right. We'll make it December 27th,
18 2016. Trustee may file a response and it's optional, of
19 course on the part of the trustee. You've already stated your
20 position and agreement with the city and of course if the
21 trustee changes that view based on what Mr. Wolak files, then
22 that -- that's up to -- up to the trustee.

23 Mr. Swanson, the city's response deadline should be how
24 long after December 16?

1 THE COURT: That's fine, January 17, 2017. That
2 response may be a brief and any exhibits, including evidence,
3 including affidavits and documents.

4 And we will have a further non-evidentiary hearing on
5 this claim objection on January 25, 2017 at 1:30 p.m. That's
6 a day where I think we already have set up for an available
7 date for the City of Detroit to have hearings on claim
8 objections. So you're probably going to be here anyway --
9 anyway.

10 And again this is a non-evidentiary hearing. So if I --
11 if I conclude during that hearing that an evidentiary hearing
12 is required, I will schedule one, but it won't be that day.

13 So I'm going to prepare and enter a -- an order
14 scheduling type order reflecting these further proceedings.
15 Is there anything else that -- other than what I've talked
16 about here that anyone thinks we should -- I should include or
17 address in this order I'm going to do. Mr. Swanson.

18 MR. SWANSON: No, Your Honor. Thank you.

19 THE COURT: Mr. Kilpatrick.

20 MR. KILPATRICK: No, Your Honor. Thank you.

21 THE COURT: Ms. Arndt.

22 MS. ARNDT: No, Your Honor. Thank you.

23 THE COURT: All right. I will -- as I said I'll
24 prepare an order and I'm also going to file this transcript of
25 this bench opinion in the other case that I mentioned to you

1 also. Thank you on that matter.

2 MS. ARNDT: Thank you, Your Honor.

3 MR. KILPATRICK: Thank you, Your Honor.

4 THE COURT: All right. So the next matters I want
5 to hear are the two matters that I want to call and hear
6 basically together because they seem to involve at least one
7 common issue. And that's the remaining two matters that were
8 scheduled for hearing today.

9 First, the city's motion to enforce the claim bar date
10 order basically against Danny Crowell, Leota Murphy, and
11 Jasmine Crowell. That's docket 11357. And also then the
12 city's motion to enforce again the bar date order, I think,
13 against Najib Hodge. That's docket number 11583.

14 So we'll hear those matters. One moment though. All
15 right. Let's -- I know we've already had appearances, but
16 tell me who's going to argue this -- these motions for the
17 city.

18 MR. SWANSON: Your Honor, Marc Swanson will.

19 THE COURT: All right. And other appearances on
20 these motions.

21 MR. DEDVUKAJ: Good afternoon, Your Honor. Joe
22 Dedvukaj here on behalf of Danny Crowell, Leota Murphy, and
23 Jasmine Crowell.

24 THE COURT: One second. I -- I can spell your name,
25 based on what you filed, but help me with the pronunciation

1 again, your last name.

2 MR. DEDVUKAJ: Dedvukaj.

3 THE COURT: Dedvukaj?

4 MR. DEDVUKAJ: You have it.

5 THE COURT: Okay. I want to try to say your name
6 right. Okay. All right. And -- and you, sir?

7 MR. DEMPSEY: May it please the Court, my name is
8 Doug Dempsey. I'm here on behalf of Mr. Hodge.

9 THE COURT: All right. One second. All right. Mr.
10 Swanson, I'll hear from you first on these motions and then
11 we'll hear from the other attorneys.

12 MR. SWANSON: Thank you, Your Honor. How I outlined
13 my argument, I believe there's one common issue to -- to both
14 and that's what I've referred to in my response as a motor
15 vehicle plan provision.

16 The Crowell, Murphy, Crowell response raises the
17 additional argument that the claims arose post-petition. I
18 was going to address that argument first and then address the
19 motor vehicle plan provision argument which I believe is -- is
20 common to both sets of --

21 THE COURT: That's fine.

22 MR. SWANSON: Okay. Your Honor, the Crowell,
23 Murphy, Crowell response raises an argument that their claim,
24 or each of their claims arose post-petition.

25 Your Honor, that argument should be rejected. Each of
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1 the plaintiff allege that they were hit by a truck owned by
2 the City of Detroit on June 3rd, 2013. That's one and a half
3 months prior to the city's bankruptcy case.

4 All of the claims that are asserted in the State Court
5 lawsuit by each of the plaintiffs arise out of that accident
6 which occurred on June 3, 2013. Yet for some reason the
7 plaintiffs claim that their claims did not arise until they
8 actually filed the complaint in -- in May of 2016.

9 Your Honor already considered the plaintiffs' approach.
10 And that approach is called the right to payment test. That
11 approach means that a claim doesn't arise until all statutory
12 elements are satisfied.

13 The Court rejected that approach. Instead the Court
14 adopted the fair contemplation test. And the Court had the
15 opportunity to consider how the fair contemplation test should
16 be applied in circumstances that are exactly similar here,
17 that being an auto accident.

18 In that opinion the Court held that the claim when you
19 are hit by a -- a truck occurs when you are hit by the truck,
20 not at some later date. And that date is June 3rd, 2013. The
21 city thus requests that the Crowell, Murphy, Crowell argument
22 regarding having a post-petition claim be denied.

23 The second argument --

24 THE COURT: Well, before you move to the second

1 going to have the other side respond on this argument and then
2 we'll deal with this argument since it's not a common issue
3 and then we'll go to the common issue.

4 Did you want to respond more specifically to the -- the
5 counter argument made by counsel for these creditors, Crowell
6 and Murphy, and Crowell? That is they -- they did not know
7 they had a claim until after the petition date.

8 MR. SWANSON: Well, I think they allege that they
9 didn't get medical testing until after the petition date. And
10 because they didn't get medical testing until after the
11 petition date, they weren't aware that they had a claim until
12 after the petition date.

13 But, Your Honor, I think it's within anyone's fair
14 contemplation that if they're hit by a truck that they would
15 have a -- that it would be within their fair contemplation
16 that they might have a claim arising from that accident when
17 that accident occurred.

18 And the plaintiffs here allege that -- that their claim
19 arising from an accident that occurred on June 3rd, 2013,
20 didn't arise until May of 2016 because they didn't get medical
21 testing until that point.

22 Your Honor, I don't think that's -- that's a -- a theory
23 that -- that holds water. The claim arose and was within
24 their fair contemplation when -- when the accident occurred.

1 -- on this is based on Michigan Compiled Laws, Section
2 500.3135(1) apparently. Which imposes tort liability for
3 non-economic loss caused by the tort feason's ownership,
4 maintenance, or use of a motor vehicle, "only if the injured
5 person has suffered death, serious impairment of bodily -- of
6 body function or permanent serious disfigurement."

7 That's the -- the argument as I understand it from the
8 other side is they didn't have a claim until they knew or
9 until the fact -- perhaps until it was evident that they had
10 suffered serious impairment of body function or permanent
11 serious disfigurement. Obviously not death, but within the
12 meaning of that statute.

13 Now you've argued, I know, that that's -- what they're
14 arguing is tantamount to their right to payment test which
15 this Court rejected in -- in the opinion -- my opinion several
16 months ago in this case that you cite in your brief.

17 But why is it -- did you want to say anything more about
18 why it was within fair contemplation applying the fair
19 contemplation test or analysis before the bankruptcy case was
20 filed, you know, basically right after the accident.

21 MR. SWANSON: Sure.

22 THE COURT: That these individuals had suffered
23 serious impairment of body function or permanent serious
24 disfigurement. Or are you arguing it's not necessary even for
25 that to be the case. It's enough that the accident occurred

1 pre-petition, period.

2 MR. SWANSON: I -- I -- I would stand by that
3 argument. Then I'd also point the Court to some of the
4 factors that it had considered when applying the fair
5 contemplation test to the last auto accident.

6 The Court talks about the debtors' conduct. The debtors'
7 conduct here occurred on June 3rd, 2014. There's no conduct
8 after the petition date.

9 The parties' pre-petition relationships, another factor
10 this Court considered. The parties' pre-petition relationship
11 ended when that accident occurred on June 3rd, 2013.

12 The parties' knowledge. I mean the city knew that it hit
13 her on 2013 and she knew that. The plaintiffs knew that they
14 were hit at that date. They allege here that they weren't
15 aware that they had serious impairment until the day that the
16 complaint was filed which seems nonsensical to me.

17 But, you know, that was when both parties knew that there
18 could be a claim arising out of a truck accident. And the
19 elements of the underlying claim. I think all of those point
20 to --

21 THE COURT: What about the elements in the
22 underlying claim?

23 MR. SWANSON: Well, that's one of the factors the
24 Court said that they could consider. And here it's

25 essentially that you need to have a -- a serious injury.

1 And -- and I suppose that's the only element. And if we
2 were going to -- and -- and that injury could have existed
3 when that accident occurred. I don't know how this injury
4 couldn't have manifested itself for over three years after the
5 car accident occurred.

6 It seems like if you are hit by a truck it's within your
7 fair contemplation that you're going to have a claim arising
8 from that -- that accident. And -- and you clearly wouldn't
9 have to satisfy all the statutory elements under 3135 because
10 that would just take us right back to the right to payment
11 test.

12 And they're not even really arguing that they didn't
13 satisfy the -- the statutory element. What they're arguing
14 is, that they didn't -- they didn't know that they satisfied
15 the statutory element.

16 So I think we have -- they're asking for an even broader
17 test. I mean the elements certainly could have been
18 satisfied, but they're talking about their -- their knowledge.
19 So objectively things could have, you know -- the -- even the
20 right to payment test could have been satisfied.

21 THE COURT: Well, the right -- the -- under the
22 right to payment test even if that were the test, it's not the
23 knowledge of the injured party that they have a serious
24 impairment, et cetera. It's that in fact they have a serious
25 impairment, right?

1 MR. SWANSON: Sure.

2 THE COURT: So whether they know it or not.

3 MR. SWANSON: Yeah. And I don't think that --

4 THE COURT: Or realize it or think it.

5 MR. SWANSON: Yeah.

6 THE COURT: If they have it, then they have a right
7 to payment under the tort -- the statute.

8 MR. SWANSON: I don't think there's been any facts
9 alleged here which said that the condition didn't exist when
10 the accident occurred. The only facts we have here are we
11 going to get tested for three years. So we didn't know that
12 we had a serious impairment. And we just had this serious
13 impairment for -- for three years, but we had no knowledge of
14 it which seems, you know -- you know, a bit far fetched.

15 THE COURT: All right. Anything else about this pre
16 -- pre versus post-petition claim issue?

17 MR. SWANSON: Nothing further, Your Honor.

18 THE COURT: I think we'll pause you here and let
19 counsel for the Crowell -- Mr. Crowell and -- the Crowells and
20 Murphy respond on that issue now. So Mr. Dedvukaj, did I say
21 it right?

22 MR. DEDVUKAJ: That's correct.

23 THE COURT: Okay.

24 MR. DEDVUKAJ: Thank you, Your Honor.

25 THE COURT: What about that issue?

1 MR. DEDVUKAJ: Actually that's a very good question.
2 If the right to payment in this case would not accrue until --
3 under Michigan no fault law there is an objectively manifested
4 injury that qualifies as a serious impairment that affects a
5 person's general ability to lead a normal life. And some of
6 the factors have been set out -- set forth in the -- by the
7 Michigan Supreme Court in the McCormick case.

8 Those things absolutely in this case did not develop
9 until much much later. And May of 2016 is when the elements
10 came together to establish a serious impairment of an
11 important body function that affects their general ability to
12 lead a normal life.

13 These people have absolutely no medical knowledge. They
14 didn't have the testing that would diagnose the injuries that
15 are pleaded in the complaint which the city has been kind
16 enough to attach.

17 THE COURT: Well, you're arguing that, but there's
18 -- there's no evidence in the record in this -- before me that
19 that -- to support those assertions at this point, right?

20 MR. DEDVUKAJ: That's correct.

21 THE COURT: It's not -- for example, I mean all I
22 have really is your State Court complaint and what you say in
23 your brief and neither one is evidence. But the State Court
24 complaint doesn't -- doesn't really give any clues about that

25 subject, does it?

1 MR. DEDVUKAJ: Well, it does. It -- it outlines the
2 type of injuries each of the plaintiffs sustained.

3 THE COURT: Yes.

4 MR. DEDVUKAJ: In the -- in the accident.

5 THE COURT: Yes.

6 MR. DEDVUKAJ: And they're medically identifiable
7 and --

8 THE COURT: I did read the complaint and saw the
9 list for each of the plaintiffs, the three plaintiffs of their
10 various injuries.

11 MR. DEDVUKAJ: Now if this had been a closed head
12 injury where the person was diagnosed with a closed head
13 injury right after the accident I would say would accrue that
14 and the -- their right to payment would -- would exist at that
15 point. And one could fairly contemplate that they should know
16 at that point.

17 But these weren't the type of injuries that the statute
18 carves out to establish their right to payment or a reasonably
19 prudent person would know who has absolutely no medical
20 background, that these are the injuries that qualify for
21 compensation under the no fault act.

22 THE COURT: Well, objectively manifested serious
23 impairment is essentially the test.

24 MR. DEDVUKAJ: Yes, sir.

25 THE COURT: Right?

1 MR. DEDVUKAJ: That's right.

2 THE COURT: Under this statute. And for the right
3 to payment to exist.

4 MR. DEDVUKAJ: That's correct. And the Michigan
5 Supreme Court --

6 THE COURT: So -- so that -- that can occur of
7 course before the victim of an accident has gone to a doctor
8 or has been diagnosed, or tested. And before they know what
9 the technical medical problem is or problems are with what
10 they've suffered, right?

11 MR. DEDVUKAJ: That's right. As a matter of fact --

12 THE COURT: They objectively -- it's objectively
13 manifested by how the person feels, what they can and cannot
14 do, those sorts of things.

15 MR. DEDVUKAJ: No. The Michigan Supreme Court has
16 said that that is not an objective manifestation. In fact
17 it's subjective.

18 THE COURT: What case says that?

19 MR. DEDVUKAJ: That would be the McCormick case.
20 You can look --

21 THE COURT: Is that cited in your brief?

22 MR. DEDVUKAJ: It is not cited in my brief, Your
23 Honor. But McCormick is the most recent Michigan Supreme
24 Court case on the subject. There is the DeFranco case.

25 THE COURT: Is that cited in your brief?

1 MR. DEDVUKAJ: It's not cited in my brief. It's
2 D-e-F-r-a-n-c-o would be the lead plaintiff. And Cassidy.
3 And then there's -- the Michigan Supreme Court has said
4 objectively manifested would be something that would be picked
5 up on an MRI, CAT scan, x-ray, or could be seen by a trained
6 physician on an objective basis.

7 For example, a gash. Your arm being cut off, something
8 of that nature.

9 THE COURT: So is -- if we apply the fair
10 contemplation test and you're familiar with it, you read the
11 Senczyszyn case.

12 MR. DEDVUKAJ: Yes, sir.

13 THE COURT: You cited that in your brief.

14 MR. DEDVUKAJ: Yeah.

15 THE COURT: And -- and I quoted and relied on that
16 in my opinion in the City of Detroit case that Mr. Swanson
17 cited in his reply brief.

18 MR. DEDVUKAJ: Although that's --

19 THE COURT: All right, just a minute.

20 MR. DEDVUKAJ: I'm sorry.

21 THE COURT: How a person feels and how they're
22 limited to their own knowledge, that is without a medical
23 diagnosis or testing or you know, those sort of things, can
24 certainly give a person reasonable or fair contemplation that
25 they may have a serious objectively manifested serious

1 impairment.

2 MR. DEDVUKAJ: Not necessarily. Not necessarily
3 because you know, you'd have to have an expert that actually
4 says it came from the car accident. People can feel, you
5 know, different -- different people feel different symptoms
6 and report symptoms differently. And not necessarily symptoms
7 that would be traceable to a motor vehicle accident. So --

8 THE COURT: What evidence would you offer if you
9 were permitted an opportunity to offer evidence since you've
10 not offered any evidence yet that the -- that the right to
11 payment in fact under these Michigan statute and -- and case
12 law did not actually arise until after the bankruptcy was
13 filed by the City of Detroit.

14 MR. DEDVUKAJ: I would offer medical records,
15 testing that was done, things of that nature. And perhaps --

16 THE COURT: To show -- and it would show what?

17 MR. DEDVUKAJ: It would show what we pled in the
18 complaint that they've been diagnosed with those soft tissue
19 injuries that only a doctor would -- would know and not your
20 -- your average person who doesn't have any medical
21 background.

22 THE COURT: And so you want to elaborate any more on
23 your argument that -- as to why you say that the right to
24 payment under this statute did not arise until after the

25 bankruptcy filing, a couple months after, a month or so after
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1 the accident.

2 MR. DEDVUKAJ: Right. I think maybe distinguishing
3 your previous ruling with respect to a no fault claim and your
4 previous ruling had to do with no fault benefits when a person
5 sees a doctor, gets the treatment, and gets billed. We know
6 the accrual paid for that. It's the date that the person gets
7 the treatment and is billed.

8 This is somewhat -- this is different because it's
9 something that, you know, a person would not know unless he's
10 been seen by a doctor and had the appropriate test to -- to
11 determine what that is.

12 And if you look at the McCormick case, you know the
13 Michigan Supreme Court set forth a number of factors that are
14 to be considered to determine whether a person has qualified
15 under the serious impairment of an important body function
16 that affects your general ability to lead a normal life.

17 THE COURT: So what about this case, these claims,
18 and the timing of which -- of which -- at which this claim,
19 the right to payment on these claims under this particular
20 statute arose in relation to the July 2013 bankruptcy petition
21 filing date.

22 MR. DEDVUKAJ: Well, this particular case, the fact
23 of the matter is, these are lay people. They really don't
24 even have a high school education. They have no medical

25 knowledge whatsoever.

1 They're relying on other people to tell them what's
2 wrong. And you know, when you take those factors all into
3 consideration, there's no way that it could have accrued
4 within that period of time, to meet the Michigan serious
5 impairment.

6 THE COURT: When did it -- when did it accrue?

7 MR. DEDVUKAJ: I would -- I would say it accrued by
8 May of 2016. They came in to see me about this case, I
9 believe it was April of 2016. And we looked at it and
10 basically ran it through our analysis under the McCormick
11 case, and believed that we could prove this case, mind you we
12 still have to prove it in the Wayne County Circuit Court
13 either to a Judge or a jury that they have sustained a serious
14 impairment of important body function that affects their
15 general ability to lead a normal life.

16 It's not an automatic qualification under Michigan law.
17 It's a jury's determination or a Judge if there's no jury
18 demand. As a matter of fact in a lot of cases Judges are
19 making that determination.

20 THE COURT: All right. So anything else about this
21 issue you want to say?

22 MR. DEDVUKAJ: No, sir.

23 THE COURT: Mr. Swanson, I'll give you an
24 opportunity to reply briefly on this issue and then we'll move
25 to the other issue.

1 MR. SWANSON: Your Honor, the plaintiffs here in
2 their brief state, plaintiffs' claim is post-petition because
3 -- because their claims arose when they met the serious
4 impairment of an important body function that affected their
5 general ability to lead a normal life which was May 20th, 2016
6 when complaint was filed claiming they had sustained a serious
7 impairment of an important body function that affected their
8 general ability to lead a normal life.

9 Your Honor, quite frankly that makes no sense. I mean
10 how -- what does the filing of the complaint have to do with
11 when they --

12 THE COURT: Let's suppose I agree with you.

13 MR. SWANSON: Yeah.

14 THE COURT: Does -- let's suppose I say that --
15 that's not -- that can't be right.

16 MR. SWANSON: Yeah.

17 THE COURT: That we're still out for the issue well,
18 okay, when did this right to payment arise. And I understand
19 I'm not applying -- I'm not going to apply the right to
20 payment test.

21 MR. SWANSON: Yeah.

22 THE COURT: But I think it's a factor to be
23 considered.

24 MR. SWANSON: Yeah.

25 THE COURT: In the fair contemplation test. When
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1 did it arise. What does the record tell us about that?

2 MR. SWANSON: The record doesn't tell us -- tell us
3 much about that, but --

4 THE COURT: We know the accident date.

5 MR. SWANSON: We know the accident date.

6 THE COURT: We know -- I mean that's about all we
7 know in the current record, isn't it?

8 MR. SWANSON: That is about all we know in -- in the
9 current record. And we know that that, you know, obviously
10 occurred prior to the petition date. And I -- I -- I just
11 can't imagine any set of circumstances really where you could
12 have been -- where three people could have been hit by a truck
13 a month and a half before the city's bankruptcy case and their
14 claim would not have been their fair contemplation as of the
15 petition date.

16 The fact that they would have a claim against the city
17 for -- for injuries that they potentially could have
18 sustained, I -- I -- I just don't see any set of circumstances
19 which could take this out of the realm of being a pre-petition
20 claim. Thank you.

21 THE COURT: All right. With respect to this issue I
22 -- in ruling on this issue I will -- I do adhere to and will
23 apply the fair contemplation test and the type of analysis and
24 the rulings and all the things that I made in the opinion that
25 I issued several months ago in this bankruptcy case.

1 For the record that's In Re: City of Detroit, Michigan.
2 It's reported at 548 BR 748, a decision of mine from April 19,
3 2016. The fair contemplation test is discussed among other
4 places in that opinion at Page 763.

5 And then I went on to apply that test to three different
6 claimants or types of claimants that were before me in -- in
7 the motion that was -- or the matters that were at issue
8 there.

9 The -- in order to apply that fair contemplation test
10 here to determine whether or not the claimants with respect to
11 the city's motion against the Crowells and Leota Murphy, in
12 order to apply that fair contemplation test to determine
13 whether those claimants' claims arose before the bankruptcy
14 petition was filed, or after in my view requires further facts
15 and opportunity for each side to present further facts and
16 evidence and further briefing.

17 The responding creditors here through counsel have cited
18 some cases in today's hearing that were not in their brief.
19 The parties really have not fully briefed this issue in my
20 view and should be given an opportunity to -- to file
21 supplemental briefs on the issue, as well as to submit
22 evidence.

23 And starting with the claimants, the responding claimants
24 here should be given an opportunity to present evidence and
25 further briefing in support of the -- their argument that this

1 is a fair -- under the fair contemplation test the Court
2 should rule that this is a post-petition claim, a claim that
3 arose after the bankruptcy petition rather than before.

4 So I'm going to enter a scheduling order that permits and
5 sets a schedule for such further briefing and presentation of
6 affidavits and other evidence on that issue. We'll come back
7 to that, however, in a little while. I want to -- next, I
8 want to hear -- to talk about details of that and timing and
9 so forth, schedule for those things.

10 But I want to come now to the second issue which is a
11 common issue to these two motions by the city. The -- Mr.
12 Swanson, you referred to it today as the motor vehicle plan
13 provision issue. And so let's hear about that from each side
14 starting with the city.

15 MR. SWANSON: Thank you, Your Honor. The city's
16 position on -- on this is quite simple.

17 Paragraph 4 of the bar date order said all entities that
18 assert pre-petition claims against the city must file a proof
19 of claim. Paragraph 6 of the bar date order repeated that the
20 following entities must file a proof of claim, including any
21 entity whose pre-petition claim against the city is not listed
22 in the list of claims or is listed as disputed, contingent, or
23 unliquidated.

24 And then Paragraph 22 of the bar date order spelled out
25 the consequences for entities that did not file a proof of

1 claim. And there are a couple. One can assert a claim
2 against property of the city, or the city. And -- and another
3 one is he can't receive a distribution or vote on the city's
4 bankruptcy plan.

5 Now, the bar date order's affect on these State Court
6 actions is that the -- is that -- is that they're barred
7 notwithstanding the motor vehicle plan provision. That in no
8 way affected, or impaired, or impacted the relief that this
9 Court granted under the bar date order.

10 The claims asserted by the plaintiffs in the State Court
11 lawsuit as you just heard with respect to Crowell, Murphy, and
12 Crowell, and as a review of the complaint in the Hodge action
13 indicates they are "against the city or of property of the
14 city."

15 If you didn't file a proof of claim you can't make a
16 claim against the city or property of the city. Plaintiffs
17 are also prohibited from receiving a distribution under the
18 plan because they did not file a proof of claim under
19 Paragraph 22(b) of the bar date order.

20 The plan, however, is the only document or law the
21 plaintiffs point to to support their position that they're
22 entitled to money from the city.

23 And -- and finally, Your Honor, the motor vehicle plan
24 provision provides that the city will pay -- will "pay valid
25 pre-petition claims." The plaintiffs do not have a valid

1 claim because they did not act in accordance with the bar date
2 order. And I think it's important to point out that the bar
3 date order was entered far in advance of the plan. So there
4 can't be any argument here that there was some sort of
5 detrimental reliance. We had the bar date order entered --

6 THE COURT: Well, I was going to ask you whether,
7 you know, in interpreting the provision in the plan.

8 MR. SWANSON: Yes.

9 THE COURT: The phrase you referred to, valid
10 pre-petition claims.

11 MR. SWANSON: Yes.

12 THE COURT: The issue is, is what does valid mean
13 there.

14 MR. SWANSON: Sure.

15 THE COURT: In -- in this context. Did the -- I --
16 I -- I assume the other side's view of this is that -- I think
17 the other side's view of this is that the -- the plan which
18 was confirmed of course, I don't know, roughly a year or more
19 after the bar date order and the plan that was proposed that
20 was confirmed also that was proposed after the bar date order
21 that that changed. It had -- it had the effect of -- of
22 modifying the bar date order rule that would normally apply to
23 these motor vehicle related claims by giving them special
24 treatment without requiring -- saying that proofs of claim had
25 to be filed.

1 MR. SWANSON: Yeah. But there's nothing in that
2 provision which says that.

3 THE COURT: Now, wait. We're talking just for the
4 record, we're talking about this provision on Page 62 of the
5 -- 62 to 63 of the plan.

6 MR. SWANSON: Yeah.

7 THE COURT: And then I guess we're also talking
8 about Paragraph 58 of the order confirming plan, right?

9 MR. SWANSON: Right, right.

10 THE COURT: Okay. Paragraph 58 of the order
11 confirming plan which is docket 8272. There's a copy of the
12 confirmed plan also at 8272. And that is Page 62 to 63. So
13 when you quote this phrase valid pre-petition claim you're
14 quoting from those places.

15 MR. SWANSON: Correct, Your Honor.

16 THE COURT: Both have that phrase.

17 MR. SWANSON: Yes.

18 THE COURT: The city will pay, continue to
19 administer and pay valid pre-petition Claims, capital C for
20 the word Claims, for liabilities, et cetera.

21 So valid includes a reference -- a claim is not valid
22 within the meaning of this phrase in your view if it was not
23 the subject of a proof of claim that was timely filed.

24 MR. SWANSON: That's correct, Your Honor.

25 THE COURT: Why is that? Why do you -- why do you
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1 think that I should interpret the plan that way?

2 MR. SWANSON: Well, one, the bar date order said
3 that anyone who had to -- had a pre-petition claim had to file
4 a proof of claim. So I don't know how you could have a valid
5 claim when you've disregarded an order of the Court.

6 Second --

7 THE COURT: I guess it depends on what the plan and
8 the order confirming plan say and mean about that, doesn't it?

9 MR. SWANSON: It does. But there's nothing in the
10 plan or the order confirming the plan which says that the bar
11 date order with respect to these claims is suspended.

12 In fact if you look at Page 32 of the plan, it says the
13 plan does not modify the bar date order. So to the extent
14 that --

15 THE COURT: Page what?

16 MR. SWANSON: Page 32.

17 THE COURT: All right. Hold on. I don't think you
18 cited this in your brief.

19 MR. SWANSON: I -- I did not. I saw it yesterday,
20 Your Honor.

21 THE COURT: Yeah. Because that -- of course one of
22 the thing I'm wondering is, you know, this is a very long
23 complicated plan and order confirming plan. Is there
24 something in there that speaks to this further.

25 So you're citing it's Page 32 of the plan. I'm looking
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1 at that. Where is it in there? Oh, I see Item D.

2 MR. SWANSON: No modification of bar date order.

3 THE COURT: It says the plan does not modify any
4 other bar date order including bar dates for claims entitled
5 administrative priority under Section 503(b)(9) of the
6 Bankruptcy Code. Let's talk about other bar date orders. Is
7 there a reference -- oh, there's on Page 31 there's a
8 reference in (2)(a), the general bar date provisions.

9 MR. SWANSON: Right.

10 THE COURT: Does that -- does that apply?

11 MR. SWANSON: Well, those are administrative.

12 THE COURT: That's administrative?

13 MR. SWANSON: Claims, yeah. So --

14 THE COURT: Is there some place -- okay. So you're
15 relying on sub (d) there on Page 32, the -- the reference to
16 -- saying that the plan does not modify any other bar date
17 order.

18 MR. SWANSON: Yeah.

19 THE COURT: That includes the bar date order that
20 we're talking -- that you're relying on 1782 which is for --
21 includes general unsecured claims.

22 MR. SWANSON: Correct. Paragraph 43 on Page 5
23 defines bar date order as a order that I cite to in my --

24 THE COURT: Okay, wait a minute, 45.

25 MR. SWANSON: Paragraph 43 on Page 5 of the plan.
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1 THE COURT: Oh, 5, now in the definitions.

2 MR. SWANSON: Correct.

3 THE COURT: All right. Hold on. Hold on. That
4 definition as I'm sure you're about to say includes a specific
5 reference to the bar date order you're relying on.

6 MR. SWANSON: Yeah.

7 THE COURT: Docket 1782.

8 MR. SWANSON: Yes.

9 THE COURT: Right?

10 MR. SWANSON: Correct.

11 THE COURT: So that is a -- falls within the
12 definition of bar date order as defined and from that you
13 argue that this provision (d) on Page 32 then must include
14 that.

15 MR. SWANSON: That's correct, Your Honor. So any --
16 any argument that the motor vehicle plan provision modified
17 the bar date order fails not only because there's nothing in
18 the motor vehicle plan provision which says it modifies the
19 bar date order, but there's other provision -- another
20 provision in the plan which says that nothing in the plan is
21 modifying the bar date order.

22 But, Your Honor, I don't even think we need to -- to get
23 that far because if we look at the bar date order, and I don't
24 think this Court needs to get to interpreting what a valid

25 pre-petition claim is. I -- the city views that language as
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1 certainly supporting it.

2 But the bar date order says that if you did not file a
3 proof of claim you are not entitled to assert a claim against
4 the city or property of the city. So whether valid
5 pre-petition claim means you did or you didn't file a proof of
6 claim, we have a -- a paragraph in the bar date order which
7 remains in full force and effect which says that if you didn't
8 file a proof of claim you can't assert a claim against the
9 city, or property of the city. And you're not entitled to any
10 -- any distributions under this plan.

11 So we have -- we have three arguments, each of which I
12 think --

13 THE COURT: Well, except that under the plan the
14 motor vehicle plan provision -- provisions in the order
15 confirming plan and the -- and the plan, if the claims
16 involved here in these motions are valid but they weren't
17 timely filed, there was no proof of claim filed, you might
18 have a conflict between the order confirming plan and the plan
19 on the one hand and the bar date order on the other hand
20 except that you -- that you have the provision in the plan and
21 it says the bar date order isn't modified.

22 MR. SWANSON: Yes.

23 THE COURT: Right? That -- that would -- then you
24 would have a conflict in that event, wouldn't you?

1 THE COURT: Between the bar date order and the plan.
2 Because the plan says valid claims and if valid claims
3 includes ones even for which no proof of claim was filed,
4 valid claims are going to be paid by the city and then you had
5 another provision in the same plan and the same order
6 confirming plan that said the bar date order isn't modified.
7 Doesn't that clearly conflict within --

8 MR. SWANSON: I don't think it does. Because the
9 bar date order said you can't -- you can't assert a claim
10 against the city or property of the city.

11 So how could you make the assertion that you have a valid
12 claim if the bar date order prohibits you from making that
13 assertion in the first instance. I mean the bar date order
14 says you can't make a claim against the city or property of
15 the city how -- how -- how can we get to the point where the
16 plaintiff can even make a request under that provision.

17 And further, the bar date order says you're not entitled
18 to receive any distributions under the plan. So you couldn't
19 make that request either.

20 So I -- frankly I -- I don't think that these are valid
21 claims because they -- they disregarded an order, but --

22 THE COURT: Well, your argument is then the valid
23 claim, that phrase in the motor vehicle plan provision, can
24 only mean -- can only mean one of the requirements for valid
25 means a timely proof of claim was filed.

1 MR. SWANSON: That is correct.

2 THE COURT: That it -- that's the only way to read
3 it that doesn't create a conflict between the plan and the
4 order confirming plan on the one hand and internal conflict
5 within the -- the plan, right? Because the plan has another
6 provision that says the bar date order isn't modified.

7 MR. SWANSON: That's correct.

8 THE COURT: So it sounds like what you're arguing is
9 valid claim, that phrase must mean, and the plan must mean, or
10 include a -- a -- only a claim for which a timely proof of
11 claim is filed.

12 MR. SWANSON: That's correct because then there's a
13 bar date order. You wouldn't even be able to assert a claim
14 against the city if he didn't file a proof of claim. So, you
15 know, you don't even get to the -- the valid language.

16 THE COURT: I'm just making a couple of notes to
17 myself here. And so you're arguing that I should interpret
18 the plan in a way that avoids, if possible it avoids internal
19 conflicts.

20 MR. SWANSON: Yes.

21 THE COURT: Within the plan.

22 MR. SWANSON: Yes.

23 THE COURT: If -- if it can reasonably be done.

24 MR. SWANSON: I -- I think it can be reasonably

25 done. And I -- and I don't think -- I still don't think the
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1 Court can get around the fact that we have a bar date order
2 which says you're not entitled to a distribution under the
3 plan unless you file a proof of claim. And now they're
4 seeking distribution under the plan.

5 And -- and there was nothing in the motor vehicle plan
6 provision, nothing in the order confirming the plan in
7 Paragraph 48 or 58 which -- which says that the bar date order
8 was modified.

9 THE COURT: Are there any other plan provisions --
10 or provisions in the order confirming plan that bear on this
11 issue in your view other than what you've already mentioned?

12 MR. SWANSON: Not that I'm aware of, Your Honor.

13 THE COURT: Is there anything in the order
14 confirming plan as opposed to the plan itself that says that
15 the bar date order is not modified by the plan?

16 MR. SWANSON: I believe there is. And I will look
17 for that while the plaintiffs --

18 THE COURT: You're not sure at the moment?

19 MR. SWANSON: I'm not sure at the moment, but I will
20 -- I will take a look.

21 THE COURT: Well, actually I'd like to know anything
22 that the order confirming plan says about, or -- or wherever
23 it refers to the bar date order.

24 MR. SWANSON: Sure.

25 THE COURT: And the same for the -- the plan really.
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1 Because you know, you just came up with this -- these
2 provisions to the plan about the bar date order not being
3 modified in today's hearing. That wasn't in the papers filed
4 by anyone, including you on these motions.

5 And so I, you know, I haven't -- I'm looking at these now
6 as you point these things out. So it would be helpful to
7 know, and you know, I could probably do a word search myself,
8 but you guys are very familiar with the plan I'm sure. I'd
9 like to know what -- what all is in there that mentions the
10 bar date order at all.

11 MR. SWANSON: Sure.

12 THE COURT: Other than Paragraph 58 in the order
13 confirming plan, is there anything in the order confirming
14 plan, anything else that talks about these motor vehicle plan
15 provisions?

16 MR. SWANSON: Not that I'm aware of.

17 THE COURT: All right. So anything else you want to
18 say about this issue before we hear from the others?

19 MR. SWANSON: No, Your Honor.

20 THE COURT: All right. So, I'll hear from counsel
21 for both of the responding parties, both motions now. I don't
22 care who goes first on it. Mr. Dedvukaj.

23 MR. DEDVUKAJ: Dedvukaj, thank you, Your Honor.

24 THE COURT: Dedvukaj, sorry.

25 MR. DEDVUKAJ: Yeah, actually -- actually a very

1 interesting topic and I've read over this -- I've read over
2 this provision in the plan. And it's interesting to note that
3 they call it the operation of the city motor vehicles.

4 And the reason they did that, Your Honor, is because we
5 have in Michigan what's called the Governmental Immunity Act.
6 And the only way that there can ever be a valid claim against
7 the city is if there was actually the operation of a city
8 owned vehicle.

9 And so that's what makes it valid. Now counsel, as the
10 Court's pointed out, is there a conflict between the bar date
11 and the plan language. There clearly is because the city
12 didn't put anything in there that would define and show that
13 the proof of claim timely filed bar date was going to be
14 included in this carve out of this very important provision.

15 And it's very important because the city for decades had
16 done business as a self insured entity. That's very key
17 because that's how they managed to broker this provision with
18 the State of Michigan. Because people who were injured in
19 motor vehicles should look at the entity that caused the
20 injury rather than go to Medicaid, Medicare or other state
21 funded taxpayer places of recovery.

22 It's very clear in this provision where it says nothing
23 in the plan shall discharge, release, or relieve the city from
24 any current or future liability with respect to claims subject
25 to insurance coverage pursuant to MCL --

1 THE COURT: What are you reading from?

2 MR. DEDVUKAJ: I'm reading from Paragraph 58, Your
3 Honor.

4 THE COURT: Oh, I'm sorry. I was looking at the
5 plan provision. All right. You're in the order confirming
6 plan, Paragraph 58. One second.

7 All right. Starting in the middle there with the words
8 nothing in the plan or this order should discharge, et cetera,
9 right?

10 MR. DEDVUKAJ: That's correct, Your Honor.

11 THE COURT: All right. So what about -- what else
12 about that?

13 MR. DEDVUKAJ: And I would -- I would further
14 indicate, Your Honor, that you know, plans are subject to the
15 general principles of contract construction. And in this
16 particular case the law basically says that any ambiguity
17 which there clearly is because if one could reasonably
18 interpret valid in more than one way there's a ambiguity and
19 that has to be construed against the drafter.

20 And I've got a whole slew of cases I can cite to the
21 Court. One of them being In Re: Shell Home, 280 BR 847 on
22 Page 48. And they cite their restatement section on contract
23 Section 206.

24 There is In Re: Forklift LP Corp., 363 BR 388 on Page

1 construed the plan against the drafter.

2 In Re: Harstad, 155 BR 500, Pages 510 to 511. Bankruptcy
3 District Court of Minnesota, 1993. And --

4 THE COURT: I think you can stop with the string
5 citation. I think I understand the concept.

6 MR. DEDVUKAJ: Okay.

7 THE COURT: And the oral argument is not a place to
8 cite cases that are not in your papers as a general rule. But
9 the concept is you construe an ambiguity as the drafter of a
10 contract.

11 MR. DEDVUKAJ: Yes, sir.

12 THE COURT: Which rule does not apply when both
13 parties contribute to the drafting, or several parties. And
14 that's probably what we have when we're talking about an order
15 confirming plan or a plan of this magnitude and complexity
16 where so many parties were involved in negotiations over the
17 plan and the plan language and the order confirming plan
18 before it was -- they were ultimately entered.

19 But in any case you're --

20 MR. DEDVUKAJ: I think --

21 THE COURT: -- you're arguing it's -- it's the city
22 basically that drafted this and -- and this provision should
23 be construed against them.

24 MR. DEDVUKAJ: In particular because claimants here
25 had no participation in that plan language whatsoever. So as

1 between the claimants here, the City of Detroit absolutely has
2 to be construed as the drafter.

3 And in fact a case out of the Northern District of
4 Florida in 1995 indicated that an omission of language in a
5 plan dealing with post-confirmation interest, that was
6 construed against the drafter which is essentially what --
7 what we've got here.

8 I mean there was this class of claims that they dealt
9 with in a special way and these claimants clearly fall within
10 that class.

11 THE COURT: All right. Anything else you'd like to
12 say about this?

13 MR. DEDVUKAJ: No, sir. Thank you.

14 THE COURT: All right. Thank you. All right. So
15 Mr. Dempsey.

16 MR. DEMPSEY: Thank you, Your Honor. May it please
17 the Court, I just have a couple of points I'd like to raise.
18 And I'd also like to express my congratulations to the City of
19 Detroit's attorney on their knowledge as it pertains to this
20 bankruptcy as well as this Court. I've never seen anything
21 like this before. I've been practicing 30 years and the
22 knowledge that everybody in here besides myself, and I'll
23 admit it, has pertaining to this is incredible.

24 So having said that, I think one thing that the defendant

1 two different types of claims in a motor vehicle accident.

2 There is a pot of money available which was set aside by this
3 Bankruptcy Court to pay no fault benefits, PIP benefits. Wage
4 loss, household services, attendant care, and medical bills.

5 All through the bankruptcy the medical bills were being
6 paid by the City of Detroit to the providers. The case that I
7 have involves both a first party and a third party case.

8 I believe provision 58 of the plan, excuse me, of the
9 eighth amended plan, adjustment of debts for the City of
10 Detroit specifically states that no fault benefits are to be
11 paid by the City of Detroit's other pot of money, not
12 including the general unsecured claim fund.

13 I do believe that the general unsecured claim fund may
14 have the specific provision of filing the notice of claim.
15 Having said that, I do believe that the no fault case should
16 survive and I would rely upon Mr. Dedvukaj's argument
17 pertaining to the third party case as well.

18 THE COURT: Well, you tell me the -- I think we have
19 your State Court complaint. Yeah, a copy of that is attached
20 to the city's motion, right?

21 MR. DEMPSEY: It is.

22 THE COURT: Okay. One second, hold on. Now that
23 was filed -- that's the one that was filed pre-petition.

24 MR. DEMPSEY: That is correct.

25 THE COURT: The city is complaining that you are
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1 continuing to prosecute or will continue to prosecute that
2 case and so the debate is whether you should be allowed to do
3 that.

4 MR. DEMPSEY: Well, I think it goes one step
5 further, Judge. We specifically stated to them that the case
6 would be reinstated specifically for the only purpose of the
7 no fault benefits, not the claim for the pain and suffering
8 known as the third party claim.

9 The case was originally stipulated in State Court to be
10 reinstated for the purposes of pursuing the no fault claim and
11 then all of a sudden the bankruptcy attorneys found out that
12 there was a third party claim and we've tried to convince them
13 to avoid this whole hearing today because our whole claim is
14 for the no fault benefits, but here we are.

15 THE COURT: Well, your claim or claims in the state
16 lawsuit fall within what part or parts of this Paragraph S on
17 Pages 62 to 63 of the plan?

18 MR. DEMPSEY: I can't answer that, Judge.

19 THE COURT: You can't answer that?

20 MR. DEMPSEY: I cannot.

21 THE COURT: Why not?

22 MR. DEMPSEY: I have not reviewed the entire plan.
23 I am here specifically --

24 THE COURT: I'm pointing you to a specific
25 paragraph. Do you have it in front of you?

1 MR. DEMPSEY: Paragraph 58 in my brief.

2 THE COURT: No, Paragraph 58 is in the order
3 confirming plan.

4 MR. DEMPSEY: Correct.

5 THE COURT: And then we have it's sub Paragraph S on
6 Pages 62 to 63 of the plan itself. Have you read that? I
7 think you guys all have that part in your response, don't you?

8 MR. DEMPSEY: I have S, is Paragraph S payment of
9 certain claims relating to the operation of city motor
10 vehicles?

11 THE COURT: Yeah.

12 MR. DEMPSEY: I have that just presented to me right
13 now by Mr. Dedvukaj.

14 THE COURT: I'm sorry. Was that -- that was not
15 mentioned? I thought it was mentioned in your response to the
16 motion here.

17 MR. DEMPSEY: I believe it was Paragraph 58 that was
18 mentioned. And then --

19 THE COURT: All right.

20 MR. DEMPSEY: I did mention 531. -- excuse me,
21 500.3101. I was familiar with this provision.

22 THE COURT: I see. Yeah, your response relies on
23 Paragraph 58. So what -- what I'm trying to figure out is, I
24 need to understand what your claims are in the State Court

25 lawsuit and how they relate to the -- the categories of claims
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1 in Paragraph S, Pages 62 to 63 of the plan.

2 MR. DEMPSEY: I can tell you.

3 THE COURT: I'm sorry?

4 MR. DEMPSEY: I can tell you.

5 THE COURT: Go ahead.

6 MR. DEMPSEY: The original complaint alleged first
7 and third party claims. Third party being the serious
8 objectively identified injuries, serious impairment of an
9 important body function, as well as claim for number two which
10 are the no fault benefits.

11 Fifty -- excuse me --

12 THE COURT: Wait, hold on. Number two, what do you
13 mean number two?

14 MR. DEMPSEY: I have Count 2 in the complaint.

15 THE COURT: Oh, I see. Count 2 was for what you're
16 calling no fault benefits.

17 MR. DEMPSEY: Correct, correct. Also known as PIP.
18 And that relies upon a different statute which is 500.3101 et
19 seq. whereas the pain and suffering under the general claim I
20 believe is 500.5135. That's the serious impairment issue. So
21 there are two separate issues here.

22 THE COURT: Now does Paragraph S on 62 to 63 of the
23 plan cover both types?

24 MR. DEMPSEY: It does. And it says the personal
25 injury protection benefits shall be paid. And then with the

1 -- with regard to the third party claims, they're limited to
2 the 20,000 and then they go into the general fund but they had
3 to have a proof of claim filed. I do not believe the no fault
4 benefits did. As stated in Paragraph 58 of the eighth amended
5 plan for adjustment of debts of the City of Detroit.

6 THE COURT: All right. So the personal protection
7 benefits, that part of your claim, you're saying -- you're
8 arguing did not require filing of a proof of claim.

9 MR. DEMPSEY: That's correct.

10 THE COURT: And that's the only part that your
11 clients are pursuing or want to pursue?

12 MR. DEMPSEY: It's the only part that I believe we
13 can pursue because the claim -- other than what Mr. Dedvukaj
14 argued today, because the claim did require the plan -- excuse
15 me, the notice of claim.

16 THE COURT: The plan required what?

17 MR. DEMPSEY: The notice of claim.

18 THE COURT: You mean proof of claim?

19 MR. DEMPSEY: Yes.

20 THE COURT: All right. So what else do you want to
21 say about this issue?

22 MR. DEMPSEY: I just think there's two separate
23 issues which I've already gone over. I'm not sure it was too
24 succinct, but first and third party claim, first party no --

1 was.

2 THE COURT: All right. Is that it?

3 MR. DEMPSEY: Yes, thank you.

4 THE COURT: All right. Thank you. Mr. Swanson, you
5 may reply to these arguments in support of the city's position
6 if you want to.

7 MR. SWANSON: Thanks. Thank you, Your Honor. The
8 motor vehicle plan provision in the city's view actually
9 treats first and third party claims the same. You had to file
10 a proof of claim for each to -- to be entitled to a
11 distribution under that provision.

12 The -- the Court asked -- and there's nothing in the
13 language which says that you had to file a proof of claim for
14 one, you didn't have to file a proof of claim for another one.
15 The bar date order applies with equal force to both types of
16 claims.

17 The Court asked about any language in the confirmation
18 order or the plan with respect to the bar date order. And we
19 did a quick search so I can't represent that it's
20 comprehensive, but in -- in Page 114 of the confirmation
21 order, Paragraph 69 says effective as of the confirmation date
22 but subject to the occurrence --

23 THE COURT: Wait a minute, wait a minute. Let me
24 grab it.

25 MR. SWANSON: Okay.

1 THE COURT: Let me turn to this. Hold on. I'm at
2 Page 69. Go ahead.

3 MR. SWANSON: I'm sorry, Paragraph 69, Page 114.

4 THE COURT: Oh, hold on. I'm sorry. Okay. I'm --
5 I'm at that Paragraph 69. Go ahead.

6 MR. SWANSON: Effective as of the confirmation date
7 but subject to the occurrence of the effective date which we
8 all know occurred, and subject to the terms of the plan in
9 this order, all prior orders entered in the Chapter 9 case,
10 all documents and agreements executed by the city as
11 authorized and directed thereunder, and all motions or
12 requests for relief by the city pending before the Court as of
13 the effective date shall be binding upon and shall enure to
14 the benefit of the city and any other parties expressly
15 subject thereto.

16 And then we also have the provision in the -- the plan
17 with respect to the no modification of bar date order which
18 states I think succinctly and clearly that the plan --

19 THE COURT: You mean the one you referred to
20 earlier.

21 MR. SWANSON: Correct.

22 THE COURT: Yeah.

23 MR. SWANSON: Is not a modification of the bar date
24 order. I didn't find anything in my quick search other than

1 Court's question.

2 THE COURT: Is the city -- has the city been paying
3 any type of benefits covered by the motor vehicle plan
4 provision during the pendency of the case for which a timely
5 proof of claim was not filed by the claimant?

6 MR. SWANSON: As -- as Your Honor knows, I've been
7 filing numerous motions on this issue. Any time this issue
8 comes up in State Court the city says hold on, let's check,
9 see if you filed a proof of claim. And -- and if they didn't
10 file a proof of claim, we file a motion in this case and none
11 of them have been contested for a year or so until these two
12 parties contested them.

13 So is it possible that the city has paid third party
14 benefits for people that didn't file a proof of claim. You
15 know, administratively it's probably very difficult and maybe
16 that has happened. But my consistent direction from the city
17 has been to come to this Court and seek relief.

18 THE COURT: What's difficult administratively?
19 Telling what's a pre versus a post-petition claim or what,
20 something else?

21 MR. SWANSON: Or maybe just someone missed a
22 checklist item to look for a proof of claim or you know --

23 THE COURT: All right.

24 MR. SWANSON: -- or something along those lines.

25 But -- but we have been consistently coming to this Court.

1 THE COURT: You're not aware at least of a -- of a
2 practice by the city that would be inconsistent with your --
3 the interpretation of plan in the bar date order that you're
4 arguing today?

5 MR. SWANSON: I'm not aware of it. And -- and I've
6 filed many many motions in this Court which are consistent
7 with the actions I've taken here.

8 THE COURT: All right. Go on.

9 MR. SWANSON: Frankly, Your Honor, I have nothing
10 further unless -- unless the Court has -- has questions. We
11 believe the bar date order should be enforced. There's
12 nothing in the plan which says that the bar date order
13 shouldn't be enforced.

14 In fact both the plan and -- and the confirmation order
15 state that all prior orders entered remain and the plan
16 contains a very specific reference with respect to the bar
17 date order which says that -- that it should be enforced.

18 There's two provisions in the bar date order which state
19 that you can't assert a claim against the city if you didn't
20 file a proof of claim. And you can't get a distribution under
21 the plan. And the city would rest on -- on those provisions.

22 THE COURT: What about the language that Mr.
23 Dedvukaj cited at paragraph -- in Paragraph 58 of the order
24 confirming plan. Nothing -- "nothing in the plan or this

1 current or future liability with respect to claims subject to
2 insurance coverage pursuant to MCL 500.3101." That -- that
3 language.

4 MR. SWANSON: Sure. And that Paragraph 58 which is
5 on page -- do you have a reference?

6 THE COURT: Page 108 of the order confirming plan.

7 MR. SWANSON: Page 108, thank you. Well, Your
8 Honor, it says current liability. There is no current
9 liability if the city -- if no proof of claim was filed.

10 The bar date order says that you can't assert a claim
11 against the city or property of the city and you're not
12 entitled to a distribution. So I don't see how -- how -- how
13 there could be a current liability because we already had an
14 -- an order which says that -- that there is no liability.

15 And we're not relying on the plan. What we're relying on
16 is the bar date order.

17 THE COURT: No, I know. I mean --

18 MR. SWANSON: Yeah.

19 THE COURT: Counsel -- opposing counsel is pointing
20 to this as -- as I think as a provision in the order
21 confirming plan that clarifies and makes clear his view of
22 this.

23 MR. SWANSON: Well, I mean one, we can -- we can
24 parse it out. Nothing in this plan or this order shall

25 discharge.

1 We're not arguing that there's anything in the plan or
2 the confirmation order. What we're arguing is that there's
3 something in a separate order, in the bar date order which
4 relieves the city of the liability.

5 And -- and secondly, Your Honor, there can't be, as I --
6 as I just said, there can't be a current liability if you
7 already have an order which says that there can't be a current
8 liability. So --

9 THE COURT: All right. Anything else, Mr. Swanson?

10 MR. SWANSON: No, Your Honor. Thank you.

11 MR. DEMPSEY: If I might, Judge, just very briefly.

12 THE COURT: Yeah, go ahead.

13 MR. DEMPSEY: I would challenge Mr. Swanson to show
14 us and this Honorable Court any other motions that have been
15 filed pertaining to the no fault cases. The PIP cases. The
16 ones pertaining to Paragraph 58 and Section MCLA 500.3101, bar
17 date or not.

18 You will notice -- I know this Court is well aware of
19 this plan. Paragraph 58 specifically doesn't mention 500.5135
20 which is the serious impairment issue. I can tell you that
21 some of the providers in some of our cases were being paid
22 during the pendency of the bankruptcy.

23 So I know there's a separate pot of money. What it's
24 called I'm not exactly sure and I do apologize to the Court
25 for that. But I do specifically believe that the no fault

1 claims are separate from the pain and suffering claims as they
2 pertain to this plan.

3 THE COURT: Well, all right. Thank you. I'm going
4 to -- we're done hearing oral argument today. And I'm -- I'm
5 satisfied that -- that this issue is -- is sufficiently
6 complex that I should give the parties further opportunity to
7 supplement their briefing on it. Because I'm not going to
8 rule at this moment on this issue, this -- the second issue
9 we've been dealing with, nor am I going to rule on the first
10 issue today.

11 I want to take some time to think about the arguments of
12 the parties and -- and consider the bar date order, the plan,
13 and the order confirming plan, the provisions the parties have
14 argued about and possibly other provisions in those -- in
15 those documents.

16 But while I do that because the parties have not
17 necessarily exhausted the plan and order confirming plan and
18 bar date order provisions in terms of citing them to me and
19 arguing from them, and because there may well be other
20 provisions in these documents, particularly the plan and the
21 order confirming plan that may have some bearing or that the
22 Court should be aware of, before it rules on this -- on this
23 issue.

24 I'm going to give the parties an opportunity for optional
25 supplemental briefs to be filed addressing this second issue.

1 And I say optional. That means you can file it or not file
2 it. And either way is fine, nobody is going to get defaulted
3 for not filing a further brief. But I'm going to give you the
4 opportunity.

5 With respect to the motion directed against the -- the
6 Crowells and Ms. Murphy, we're going to have further
7 proceedings and briefing on that one anyway with respect to
8 the pre-petition versus post-petition claim issue.

9 And so I want to set a schedule for these things now and
10 I'll put it into an order confirming in an order, one or two
11 orders that I'm going to enter after this hearing.

12 Let's go back to this first issue that was argued which
13 relates to the Crowell, Crowell, and Murphy motion by the
14 city. The issue of whether the claims of the Crowells and Ms.
15 Murphy are claims that arose before the petition date or -- or
16 after. I want to give -- I'm going to give the respondent,
17 that is the claimants, the Crowells and the Murphys an
18 opportunity to file a -- a further brief and exhibits
19 containing evidence in the form of affidavits, documents,
20 other documentary material in support of their argument that
21 the -- their claim at issue arose after the filing of the
22 city's bankruptcy case under the fair contemplation test that
23 this Court has applied and has ruled today will apply to this
24 issue in this case.

1 response, brief or other exhibits, or both if it wishes to
2 what the claimants file. And then we're going to set a
3 deadline for supplemental briefing on the second issue, the
4 plan -- the motor vehicle plan provision issues that have been
5 argued today.

6 So I want to set a schedule. I'd like to set a deadline
7 for the claimants, the creditors with respect to each of these
8 two motions to be the same day. So, Mr. Dedvukaj.

9 MR. DEDVUKAJ: Yes, Your Honor.

10 THE COURT: Did I say that right?

11 MR. DEDVUKAJ: Yeah.

12 THE COURT: How much time do you want to have before
13 I have a deadline for you to file this?

14 MR. DEDVUKAJ: Can I have a date in January?

15 THE COURT: I'm sorry?

16 MR. DEDVUKAJ: Can I have a date in January, please?

17 THE COURT: What do you want?

18 MR. DEDVUKAJ: How about January 25th?

19 THE COURT: That's a long way off. Why so long?

20 MR. DEDVUKAJ: We've got three claims that I'm going
21 to have to give you evidence on. If it was just one it
22 wouldn't be that big of a deal but since I've got three
23 claimants --

24 THE COURT: Hold on.

25 MR. DEDVUKAJ: And then I've got a vacation I'm

1 taking from the 16th, taking my kids down to Florida.

2 THE COURT: You asked for what again, January what?

3 MR. DEDVUKAJ: January 25th, 2017.

4 THE COURT: All right. I will take a deep breath
5 and give you that long. January 25. We do have some holidays
6 coming up between now and then I -- I recognize that as well.

7 All right. So with respect to the second issue,
8 claimants want how long to file a further brief or briefs,
9 optional briefs on that second issue. Mr. Dedvukaj.

10 MR. DEDVUKAJ: Your Honor, I can do it by December
11 15th on the second issue.

12 THE COURT: Is December 15 sufficient time for you,
13 Mr. Dempsey?

14 MR. DEMPSEY: Yes, Your Honor.

15 THE COURT: All right. We'll make that deadline
16 December 15. All right. Now Mr. Swanson, with respect to
17 that second issue where the other side has a deadline of
18 December 15, how long after that do you want me to give you to
19 file any response?

20 MR. SWANSON: Would January 9th work for the Court?

21 THE COURT: I'm sorry?

22 MR. SWANSON: January 9.

23 THE COURT: Hold on. Yes, that's a Monday. January
24 9, 2017, that's fine. And then with respect to that first

1 after January 25 do you want me to give you to respond to
2 that?

3 MR. SWANSON: Thirty days, Your Honor, February 25th.

4 THE COURT: That's a Saturday. Let's pick a week
5 day.

6 MR. SWANSON: Sure, February 24th.

7 THE COURT: All right. Friday, February 24, 2017.

8 I'm going to set a further hearing date, non-evidentiary
9 hearing date on -- on these motions. Which I think probably
10 certainly will cover and include further opportunity for oral
11 argument regarding the -- the pre versus post-petition claim
12 issue.

13 It may cover also further opportunity for oral argument
14 on the motor vehicle plan provision issue, but it may not. I
15 mean if I -- if I decide that issue with some sort of written
16 opinion before the further hearing date then -- then that
17 issue will be resolved and done. But for the time being I'm
18 going to -- I'm going to adjourn -- or schedule a further
19 hearing on both these motions to occur soon after the February
20 24, 2017 deadline that the city will have to respond, to file
21 their last response of the ones we've been talking about.

22 So we're looking at March. Mr. Swanson, I don't think we
23 have gone out that -- into March for -- to -- to give you
24 claim objection hearing dates in the city's case, have we?

1 we're going to need them though, so I'm happy to -- to speak
2 with --

3 THE COURT: Well, I -- generally we've been doing
4 these about in the middle of the month. Whatever date we pick
5 for this further hearing in March we can make -- you can just
6 assume that will be the claim objection hearing date in March
7 if you want only one in March.

8 MR. SWANSON: Yeah.

9 THE COURT: And then we'll work on other months
10 later. But so we're looking at March 15 is a Wednesday but
11 I'm out of town that day. I'm -- I'm looking at -- I'd like
12 to do this on March 22.

13 MR. SWANSON: No objection with the city, Your
14 Honor.

15 THE COURT: It would be March 22, 2017 at 1:30 p.m.

16 MR. DEDVUKAJ: 1:30 Judge, thank you.

17 THE COURT: Does that work on other counsel's
18 calendar?

19 MR. DEDVUKAJ: Yes, Your Honor, it does. Thank you.

20 MR. DEMPSEY: I'll make it work, Judge. Thank you.

21 THE COURT: It's so far out. I mean you may have a
22 trial date in the way, but you're both good, do you think?

23 MR. DEDVUKAJ: I think so.

24 MR. DEMPSEY: Yes, Your Honor.

25 THE COURT: All right. So that will be March 22.
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1 And -- and -- all right. So I will prepare and enter a
2 scheduling type order reflecting this which I hope comes
3 somewhere near to reflecting what I just said.

4 Is there anything else that any of you think I should
5 address in that order? Mr. Swanson.

6 MR. SWANSON: No, Your Honor.

7 THE COURT: Mr. Dedvukaj.

8 MR. DEDVUKAJ: No, Your Honor.

9 THE COURT: Did I say it right that time?

10 MR. DEDVUKAJ: You said it right.

11 THE COURT: Okay.

12 MR. DEDVUKAJ: Very good.

13 THE COURT: Well, I'm sure I'll butcher it next
14 time, but all right. Mr. Dempsey.

15 MR. DEMPSEY: No, Your Honor.

16 THE COURT: All right. So we're done. I think that
17 concludes all our matters for today. And so we'll see some or
18 all of you next time. Thank you all very much.

19 MR. SWANSON: Thank you, Your Honor.

20 MR. DEDVUKAJ: Thank you, Your Honor.

21 MR. DEMPSEY: Thank you, Your Honor.

22 THE CLERK: Please rise. Court is adjourned.

23 (Court Adjourned at 4:53 p.m.)
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7 We certify that the foregoing is a correct transcript from the
8 electronic sound recording of the proceedings in the
9 above-entitled matter.

10
11 /s/Deborah L. Kremlick, CER-4872
12 Jamie Laskaska
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Dated: 12-2-16